Calendar No. 14

96TH CONGRESS
1st Session

SENATE

REPORT
No. 96-7

TAIWAN ENABLING ACT

REPORT

OF THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

TOGETHER WITH ADDITIONAL VIEWS

ON

S. 245

MARCH 1 (legislative day, FEBRUARY 22), 1979.—Ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1979

39-010 O

★(Star Print)

COMMITTEE ON FOREIGN RELATIONS

FRANK CHURCH, Idaho, *Chairman*

CLAIBORNE PELL, Rhode Island
GEORGE McGOVERN, South Dakota
JOSEPH R. BIDEN, JR., Delaware
JOHN GLENN, Ohio
RICHARD STONE, Florida
PAUL S. SARBANES, Maryland
EDMUND S. MUSKIE, Maine
EDWARD ZORINSKY, Nebraska

JACOB K. JAVITS, New York
CHARLES H. PERCY, Illinois
HOWARD H. BAKER, JR., Tennessee
JESSE HELMS, North Carolina
S. I. HAYAKAWA, California
RICHARD G. LUGAR, Indiana

WILLIAM B. BADER, *Staff Director*

Calendar No. 14

96TH CONGRESS, 1st Session | SENATE | REPORT No. 96-7

TAIWAN ENABLING ACT

MARCH 1 (legislative day, FEBRUARY 22), 1979.—Ordered to be printed

Mr. CHURCH, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany S. 245]

The Committee on Foreign Relations, to which was referred the bill (S. 245) to promote the foreign policy of the United States by authorizing the maintenance of commercial, cultural, and other relations with the people on Taiwan on an unofficial basis, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

A. PRINCIPAL PURPOSE

The primary purpose of this bill is to provide statutory authorization for the maintenance of commercial, cultural, and other unofficial relations with the people on Taiwan.

B. COMMITTEE ACTION

On February 5, 6, and 7, 1979, the Committee on Foreign Relations held public hearings on S. 245 dealing with United States relations with the people on Taiwan.

The following witnesses appeared on February 5:

The Honorable Warren Christopher, Deputy Secretary, Department of State.

The Honorable Herbert J. Hansell, Legal Adviser, Department of State.

Professor Victor Li, Stanford University School of Law, Palo Alto, California.

The Honorable John M. Thomas, Assistant Secretary, Bureau of Administration, Department of State.

The Honorable Leonard Unger, Former Ambassador to the Republic of China.

The Committee witnesses on February 6 were:

Senator Barry Goldwater (R-Ariz.).
Senator Edward Kennedy (D-Mass.).
Senator Alan Cranston (D-Calif.).
Senator Robert Dole (R-Kan.).
Senator Dennis DeConcini (D-Ariz.).
Senator John Danforth (R-Mo.).

Professor Parris H. Chang, Department of Political Science, Pennsylvania State University.

Mr. Ralph N. Clough, The Woodrow Wilson International Center for Scholars.

Mr. Robert P. Parker, President, American Chamber of Commerce in the Republic of China.

Professor Kenneth Lieberthal, Department of Political Science, Swarthmore, College.

The Honorable David Kennedy, Chairman of the Board, U.S.-Republic of China Economic Association and former Secretary of the Treasury.

Dr. Richard L. Walker, Director, Institute of International Studies, University of South Carolina.

Mr. Mark Chen, President, Taiwanese Association of America, Springfield. Virginia.

The Committee witnesses on February 7 were:

Dr. Ray S. Cline, Center for Strategic and International Studies, Georgetown University.

Vice Admiral Edwin K. Snyder, USN (Ret.), Former Head of the Taiwan Defense Command.

Dr. Robert A. Scalapino, Director, Institute for East Asian Studies, University of California, Berkeley.

Mr. A. Doak Barnett, Senior Fellow, The Brookings Institution.

On February 8, 1979, the Committee on Foreign Relations met in executive session and heard the testimony of:

Mr. Michael Armacost, Deputy Assistant Secretary for East Asian and Pacific Affairs, Department of Defense.

Lt. Gen. Richard L. Lawson (USAF), Director for Plans and Policy, Joint Chiefs of Staff.

Mr. Roger Sullivan, Deputy Assistant Secretary for East Asian and Pacific Affairs, Department of State, accompanied by The Honorable Herbert J. Hansell, Legal Adviser, Department of State.

The following individuals or organizations did not appear before the Committee as witnesses, but did submit written testimony for the hearing record:

Col. Angus M. Fraser, USMC (Ret.), Author on Chinese Military Matters and Former Consultant to the RAND Corporation, Alexandria, Virginia.

Mr. H. O. Reinsch, President, Bechtel Power Corporation, San Francisco, California.

Mr. Alexander Matiuk, President, Gibbs & Hill, Inc., New York, New York.

World United Formosans for Independence, Kearney, New Jersey.

Professor Hung-dah Chiu, University of Maryland Law School.

Professor Yuan-li Wu, former Deputy Assistant Secretary of Defense, Professor of Economics, University of San Fransicco.

Mr. E. A. Carter, President, Oak Industries, Inc., San Diego, California.

Professor Michael Lindsay, Professor Emeritus of Far Eastern Studies, The American University.

Mr. John M. Carey, National Commander, The American Legion.

Chinese National Association of Industry and Commerce, Taipei, Taiwan.

Governor Meldrim Thomson, Jr., of New Hampshire on behalf of the Conservative Caucus, Inc.

The Asian Center, New York, New York.

Dr. Richard C. Kagan, Assistant Professor of History, Hamline University, St. Paul, Minnesota.

Mr. Kuo Yu-shin, President, Overseas Alliance for Democratic Rule in Taiwan.

Dr. C. Martin Wilbur, George Sansom Professor Emeritus of Chinese History, Columbia University.

Dr. Han-sheng Lin, Professor of History, Sonoma State University, Petaluma, California.

Mr. Williel W. G. Reitzer, Private Citizen.

The full Committee on Foreign Relations met in open session on February 21 to begin the markup of S. 245. At 9:00 a.m. on February 22, the Committee met in executive session to hear General David C. Jones, Chairman of the Joint Chiefs of Staff, discuss the security aspects of U.S. policy toward Taiwan and East Asia. Following this executive session, the Committee met at 10:30 a.m. to resume consideration of the bill. The bill was amended and the Committee agreed, by a 14–0 recorded vote, to report the bill favorably.

The amendments include a definition of the term "people on Taiwan" (section 101(b)); issues relating to litigation in Taiwan and the United States (section 103); continuation in force of all international treaties and other agreements (section 104); the preemptive powers of this Act (section 106(b)); property rights (section 111); provision for appropriate privileges and immunities (section 113); matters relating to the security of the people on Taiwan and the sale of defensive arms (section 114); and Congressional oversight of the American Institute in Taiwan (section 401).

The amendments are noted individually, as they arose, in the section-by-section analysis where a full description and explanation is provided.

C. Committee Comments

The bill approved by the Committee is intended to enable the United States to maintain close and friendly relations with the people on Taiwan on an unofficial basis and to do so in a manner that contributes to the peace, stability and well-being of the Western Pacific area. The bill attempts to deal with these extremely important

issues in a unique manner because of the United States desire to continue to deal with the people on Taiwan, notwithstanding its recognition of the People's Republic of China (PRC) as the sole legal government of China. No appraisal of the legislation approved by the Committee will be adequate if the bill is viewed in isolation, for United States policy toward the people on Taiwan should be viewed in connection with American policy toward the PRC, and in the larger context of policy toward Asia as a whole. It is particularly important that the United States keep in mind the interests of Japan, its major ally and trading partner in Asia, as well as the Republic of Korea, Australia, New Zealand, and the Philippines and the other members of the Association of Southeast Asian Nations (ASEAN). Nor can the steadily growing role of the Soviet Union in Asia and the Pacific be ignored.

The fact that the United States has been willing to fight three wars in East Asia during the past four decades indicates the importance attached to this area by the United States Government and the American people. The fact that the United States has felt compelled to resort to war on three occasions also demonstrates the need for a strategy that will protect the interests of the United States without requiring such heavy sacrifices in the future.

A central element in the problem of formulating a sound policy toward Asia has been the difficult and complex issue of how the United States should deal with China, Asia's largest and most populous nation, whose geographic location and illustrious history gives it a key role in Asian affairs. When China has been weak, other powers have competed to dominate it. When it has been strong, its neighbors have feared that they would be dominated by it.

The task of working out a sound China policy faced by successive United States Administrations has been complicated by two recurring problems. First, American attitudes toward China have tended to vacillate between friendship and animosity. Second, the United States has frequently overestimated or underestimated China's strength and capabilities. China's military strength was overestimated during and immediately after World War II. The military capability of the Communist forces in China was underestimated during the civil war, as was the strength of the newly-established People's Republic of China in the period before the Korean War. These shifting assessments of China's strength, and of its intentions, continued during the 1950's, the 1960's, and into the 1970's.

The United States did not intervene militarily in the Chinese civil war when the tide of battle turned against the Nationalists and the Communists gained control of the mainland. Had it not been for the actions of the PRC in forming an alliance with the Soviet Union early in 1950 and entering the Korean War against United Nations and United States forces late that year, the United States Government might well have accorded diplomatic recognition to the PRC in the early 1950's. However, these Chinese actions led the United States to extend from Europe to Asia its policy of containing the power of the Soviet Union and its allies. America's search for Asian allies led it step-by-step to the formation of an alliance and the signing of a Mutual Defense Treaty with the Republic of China (ROC) on Taiwan. This series of actions and reactions froze Sino-American relations in a pattern of bitter hostility that lasted for two decades.

It was only after the Sino-Soviet dispute developed and reached an intensity that led China to fear the U.S.S.R. more than the United States that the PRC became seriously interested in a new relationship with the United States. Only after the bitter experience of the Vietnam War, undertaken in large part to contain China, did the United States undertake a serious reappraisal of China's strength, intentions, and of American policy toward China.

This reappraisal was complicated by the Taiwan issue. China, defeated by Japan in the Sino-Japanese War of 1895, relinquished sovereignty over Taiwan to Japan. Japan formally relinquished its sovereignty over Taiwan in connection with the United States-Japan Peace Treaty of 1951, but the treaty did not specify to whom sovereignty was relinquished. Thus the sovereign status of Taiwan was left unclear.

The United States and the PRC had conducted periodic negotiations aimed at alleviating specific problems during the 1950's and the 1960's, first in Geneva and then in Warsaw. However, it was only with Henry Kissinger's secret trip to Peking in 1971 that the two countries made their first major moves toward a rapprochement. President Nixon's visit to China early in 1972 and the ensuing Shanghai Communique led both governments to pledge themselves to normalize their relations. The PRC insisted that normalization, which involved the establishment of full diplomatic relations, could take place only after the United States withdrew all its military forces from Taiwan, ended its diplomatic recognition of the Taiwan Government, and canceled its Mutual Defense Treaty with the ROC.

By the early 1970's, the United States had cooperated closely with the ROC for many years, and was impressed by its political stability and economic progress. The United States believed it had an obligation to the people on Taiwan as a result of its earlier commitments, and that it had an interest in a peaceful resolution of the Taiwan issue. The United States had also developed extensive economic interests in Taiwan. These were among the factors which prevented any agreement on normalization with the PRC in the early and mid-1970's. The PRC made a concession in 1973 by agreeing to the establishment of official liaison offices in Washington and Peking, despite its earlier insistence that it would never set up an official PRC office where a ROC embassy still operated. These liaison offices were embassies in virtually all respects but name.

The ROC was bitterly disappointed by the United States's rapprochement with the PRC, and by the Japanese shift of diplomatic recognition from the ROC to the PRC in 1972. Yet Taiwan adapted to these changes in a flexible and imaginative manner. It worked out ways to preserve unofficial relations with Japan and with other nations which had shifted recognition to the PRC, and Taiwan's economy and foreign trade continued to expand rapidly. Differences between the mainlanders, who controlled the Government on Taiwan, and the native Taiwanese majority have diminished somewhat as an increasing number of Taiwanese were brought into positions of influence and as both groups drew together in response to Taiwan's growing diplomatic isolation. Taiwan's military forces continued to improve their capabilities, and the United States continued to provide them with arms.

The Carter Administration, like the Nixon and Ford Administrations before it, was committed to normalization of relations with the PRC but hesitant to meet the PRC's three conditions. Between January 1977 and June 1978, administration officials periodically discussed the possibility of normalization with the PRC but little if any progress occurred. Indeed, the PRC added a fourth condition in 1977, namely that it would not tolerate the sale of arms to Taiwan by the United States after normalization. It was not until mid-1978 that progress began to be made. Events moved rapidly in the final months of 1978, and on December 15, 1978, President Carter announced that, on January 1, 1979, the United States would recognize the PRC as the sole legal government of China and withdraw U.S. recognition of the ROC. He also announced that the United States was notifying the ROC that it would terminate the Mutual Defense Treaty, in accordance with its provisions, by issuing the required one-year's notice of termination on January 1, 1979. President Carter stated that the United States retained an interest in a peaceful resolution of the Taiwan issue, that it would continue to provide selective defensive arms to Taiwan on a restricted basis after derecognition, and that he would propose legislation that would assure the continuation of U.S. economic and cultural relations with the people on Taiwan.

The United States' decision to shift recognition from the ROC to the PRC at this time was apparently based on several factors. The PRC had adopted a policy of according top priority to economic development and modernization. It had begun to look to the Western world and Japan for technology, capital goods, and financial assistance to enable it to become a modern industrial nation better able to deal with its major adversary, the Soviet Union. Any attack on Taiwan while this ambitious, long-term program was underway would risk undermining China's modernization effort by disrupting its relations with the United States and Japan. Peking was adopting a more moderate approach to the Taiwan issue, speaking of "reunification" rather than "liberation," and Vice Premier Teng Hsiao-p'ing spoke of allowing Taiwan to retain its social and economic systems, its higher living standards, and its own armed forces after reunification. The PRC's policies on these matters could change as they had in the past, and the PRC's failure to keep its pledges to honor Tibetan institutions after it seized control of that area in 1950 did not inspire confidence that it would permit Taiwan to enjoy real autonomy if unification occurred. Nonetheless, the Administration was encouraged by the trend of the PRC's policy. Moreover, the PRC had not developed the amphibious military forces it would need to conquer Taiwan, and it was not attempting to develop an amphibious capability.

The Administration did not press the PRC for a pledge not to use force against Taiwan during the negotiations preceding normalization, on the ground that no Chinese government would renounce the use of force against what it regarded as a province of China—a position repeatedly stated by the PRC. However, the Administration states that it made clear to the PRC that normalization rested upon the expectation that the Taiwan issue would be resolved peacefully. The Administration also stressed that it had made clear to the PRC that while the United States would terminate the Mutual Defense Treaty in accordance with its terms, rather than abrogate it as the PRC had earlier demanded, all other agreements would remain in force.

Although the PRC said it opposed continued sales of defensive arms to Taiwan, it also said it was prepared to normalize relations even though such sales would continue after the Mutual Defense Treaty ended. In return, the Administration agreed not to make any additional sales to Taiwan during calendar year 1979. On the basis of these understandings, the United States agreed to the PRC's original three conditions for normalization.

The PRC's motivation and timing regarding normalization probably were influenced by Sino-Soviet rivalry in Indochina, and specifically the signing of the Soviet-Vietnamese treaty in November 1978. That treaty may in turn have been partly a response to the Sino-Japanese treaty of peace and friendship signed in September 1978, in which Japan accepted the Chinese demand that the treaty clearly state that both parties were opposed to "hegemonism" in Asia—a code word for opposition to the Soviet Union.

The Committee made clear in its deliberations that it was not opposed to normalization of relations with the PRC. Most Members welcomed the development, noting that it had won the support of most of America's allies and friends in Asia. However, the Committee was concerned by the haste with which the Administration had moved late in 1978, the lack of consultation with Congress despite the provision in the International Security Assistance Act of 1978 which said the President should consult Congress before making policy changes which might affect the Mutual Defense Treaty, and the lack of adequate consultation between the United States and its Asian allies. The Committee was also concerned that matters affecting Taiwan's security were not being given adequate attention by the Administration. Finally, the Committee viewed the bill submitted by the Administration to enable the United States to maintain unofficial relations with the people on Taiwan as deficient in several important respects.

The Administration has stated that it recognizes the People's Republic of China (PRC) as the sole legal government of China. It has also acknowledged the Chinese position that Taiwan is a part of China, but the United States has *not* itself agreed to this position. The bill submitted by the Administration takes no position on the status of Taiwan under international law, but does regard Taiwan as a country for purposes of U.S. *domestic* law. The bill assumes that any benefits to be conferred on Taiwan by statute may be conferred without regard to Taiwan's international legal identity. The legal scholars consulted by the Committee agreed with this view. Most of these scholars thought it would be unwise to try to define Taiwan's international legal status. They said that the best approach would be to spell out the specific manner in which relations with Taiwan will be maintained by the United States. The proposed changes and amendments to S. 245 basically follow this approach.

The Administration contended that the bill it submitted contained all the provisions necessary to enable the United States to conduct relations with Taiwan on an unofficial basis. The Committee disagreed on several counts. First, it believed that a definition of the phrase "the people on Taiwan," which appears repeatedly in the bill, was required, and that the meaning should include the governing authority as well as the people governed by it.

Second, the Committee was of the view that a number of matters that were dealt with implicitly, if at all, in the bill as submitted should be dealt with explicitly if United States relations with the people on Taiwan were to be carried on in a sound and secure manner. This included such matters as the legal standing of the people on Taiwan to sue and be sued in United States courts, and the protection of property rights of entities and persons in both countries. Such provisions were included in the bill as approved by the Committee.

Third, the bill made no provision for Congressional oversight of the American Institute in Taiwan, the private instrumentality established to conduct United States relations with the people on Taiwan. The bill as amended by the Committee provides for reporting agreements made by the Institute in a manner that satisfies requirements of the Case Act. It also specifies that agreements made by the Institute are subject to the same Congressional notification, review and approval requirements as if such agreements had been made by or through a department or agency of the United States.

Fourth, the bill originally made no provision for granting any privileges and immunities to the members of offices located in the United States of an instrumentality established by the people of Taiwan to be the counterpart to the American Institute in Taiwan. The Committee bill authorizes and requests, but does not direct, the President to provide extensive privileges and immunities, as appropriate, to members of the counterpart instrumentality, subject to reciprocal privileges and immunities being granted to the members of the American Institute in Taiwan working on that island.

Finally, the bill as submitted by the Administration contained no references to the interest of the United States in Taiwan's security, and lacked any reference to the sale of defensive arms to Taiwan. The Committee was determined to remedy these deficiencies, and extensive discussions took place over the appropriate language necessary to reassure Taiwan without being inconsistent with recognition of the PRC. The language eventually approved was designed to make clear to the PRC that its new relationship with the United States would be seriously endangered if it resorted to force in an attempt to bring about the unification of Taiwan with the mainland. This reflects the view of the Committee that the United States attempt to establish a new and more cooperative relationship with the PRC in order to improve the prospects for peace and stability in Asia will be successful only if the policies of both countries take into account the views and interests of the other.

The Committee believes the bill as amended and approved will, if implemented properly, enable the United States to continue to have a close and friendly relationship with the people on Taiwan while simultaneously developing a mutually beneficial relationship with the People's Republic of China. The Committee therefore urges the Senate to approve this bill.

D. Major Issues Considered by the Committee

During its consideration of S. 245, the Committee focused on five major issues:

(1) the negotiations on normalization of relations with the PRC;

(2) the security of Taiwan;

(3) legal matters not relating to specific sections of the bill;
(4) the international political implications of normalization; and
(5) the economic impact of normalization.

These issues are discussed below.

1. THE NEGOTIATIONS

Most Members of the Committee welcomed the establishment of full, normal diplomatic arrangements with the People's Republic of China as in the interest, of the United States. There were, however, specific aspects of the recognition agreement that were examined critically during the Committee hearings.

a. *Timing and Consultations.*—The U.S.–PRC negotiations were carried out in secrecy by a very small group of U.S. officials. According to Administration testimony, the final agreements were negotiated quickly after the PRC showed some signs of flexibility, primarily on the question of future U.S. arms sales to Taiwan. The announcement made by President Carter on December 15 came as a surprise to the Congress and the American people. There were no meaningful prior consultations with Congress despite section 36 of the International Security Assistance Act of 1978, which calls for prior consultation on any proposed policy changes affecting the continuation in force of the Mutual Defense Treaty. Taiwan was informed only a few hours prior to the President's December 15 announcement. Executive Branch agencies were caught off-guard, resulting in last-minute efforts to draft executive orders and legislation to smooth the transition. Finally, the hurried and secretive negotiations left the Administration open to charges that it could have gotten a better deal.

b. *A Better Deal?*—The Administration has been criticized on several counts for not negotiating more favorable arrangements. First, the United States yielded on all three of the PRC's major conditions for normalization. These conditions were (1) termination of the Mutual Defense Treaty with Taiwan (termination on January 1, 1980), (2) U.S. troop withdrawal from Taiwan, and (3) termination of diplomatic relations with Taiwan. Even when the PRC dropped a newer fourth condition banning U.S. arms sales to Taiwan, the United States agreed to a one-year moratorium on new sales commitments.

Second, the United States did not obtain a pledge from the PRC that it would not take military action against Taiwan.

Third, the language of the December 15, 1978 communique goes slightly beyond that of the 1972 Shanghai Communique in recognizing China's claim to sovereignty over Taiwan. It also goes further than similar statements made by some other countries. In the Shanghai Communique the United States "acknowledges" and agrees not to challenge the position of Chinese on either side of the Taiwan Straits that Taiwan is part of China.

In the December 15 Communique, the United States "acknowledges" as the Chinese position that Taiwan is part of China. The extent of this change is more marked in the Chinese translations of the two communiques, but the Committee was assured by Deputy Secretary of State Warren Christopher that the United States adheres to only the English translation.

The Administration counters these criticisms by noting that:

(1) the PRC "did not contradict" the U.S. statement that the United States has an interest in the peaceful resolution of the Taiwan issue;

(2) commercial, cultural, and other relations will be maintained with the people of Taiwan;

(3) Taiwan will be able to purchase "selected defense weaponry" on a "restricted basis"; and

(4) the Mutual Defense Treaty will not be abrogated but terminated in accordance with the provisions of Article X of the Treaty, which provides that either party can terminate the treaty with one year's notice.

The Committee also noted with concern the adverse Taiwanese reaction to the recognition agreement as displayed during Deputy Secretary of State Warren Christopher's December 1978 visit to Taipei. The Committee believes that the legislation reported by the Committee should reassure the people on Taiwan that the United States will maintain close cultural and commercial ties with Taiwan and continues to be concerned with the future security of Taiwan.

c. *Collateral Assurances.*—During the course of the hearings, the Committee was assured (by a letter from the Secretary of State and by testimony from the Deputy Secretary of State) that the United States entered into no secret agreements or understandings with the Peking Government concerning normalization either before December 15, 1978, or between that date and the date of the hearings.

2. SECURITY ISSUES

a. *General.*—The continued security of Taiwan is a principal concern of the Committee. During the hearings many members expressed their view that the Administration had not taken adequate steps either during the normalization negotiations or in drafting S. 245 to insure the continued security of Taiwan. The Committee heard testimony from witnesses both in open and executive session who expressed the entire spectrum of views concerning Taiwan's security. Witnesses included Secretary of Defense Harold Brown, Chairman of the Joint Chiefs of Staff David Jones, Deputy Assistant Secretary of Defense Michael Armacost, Vice Admiral Edwin Snyder (retired), Dr. Ray Cline, Dr. Robert Scalapino, and A. Doak Barnett.

During the course of the hearings, the Committee concluded that any efforts by the PRC to resolve the Taiwan issue by other than peaceful means should be considered a threat to the peace and security of the Western Pacific area and of grave concern to the United States. The threat of an armed PRC attack against Taiwan appears highly unlikely in the foreseeable future, and the PRC's ability to mount a successful amphibious landing against the heavily fortified island of Taiwan is quite limited.

The removal of U.S. forces and installations from Taiwan will not significantly affect either the U.S. regional military posture or strategy according to Administration testimony. Members agreed, however, that the United States should provide Taiwan with a sufficient self-defense capability through the provision of arms of a defensive nature. Specific weapons systems are not mentioned in the reported Committee legislation.

b. *Analysis of the Possible Threat to Taiwan's Security.*—Chinese statements concerning their intentions to reunify with Taiwan by force are ambiguous. Chinese Vice Premier Teng Hsiao'ping told the Committee during his recent visit to Washington that, "so long as Taiwan is returned to the motherland, and there is only one China, we will fully respect the realities on Taiwan." Chinese leaders have recently made similar statements on a number of occasions (including statements to Senator Glenn) indicating a desire for peaceful reunification. The National Chinese News Agency, however, reports that, on January 5, Teng stated that "we cannot commit ourselves to use no other than peaceful means to achieve reunification of the motherland . . . we cannot tie our hands in this matter."

Secretary of Defense Brown told the Committee that "for a variety of reasons PRC military action against Taiwan is extremely unlikely for the foreseeable future." There are significant political and military reasons why a successful attack on Taiwan by the PRC is unlikely for several years. The PRC has limited amphibious capabilities. The island is heavily fortified and would be costly to take. The action could make the PRC more vulnerable to a Soviet attack. The steady rise in Sino-Vietnamese animosity during 1978 led to large-scale military conflict between the two countries early in 1979. China will be faced with a hostile Vietnam for many years, which will require the PRC to maintain substantial military forces near the Sino-Vietnamese border. And an attack on Taiwan would reverse the political gains made in the West by the current Chinese Government and jeopardize continued U.S. help for China's modernization.

But Committee members indicated their belief that it is prudent to consider the possibility that current circumstances could change. This is especially true in light of the recent PRC attack on Vietnam. Vice Premier Teng is 74 years old and has twice been purged from office. Chinese foreign policy could again dramatically change. A Sino-Soviet detente would free large numbers of Chinese troops currently near the Soviet border. The Chinese might miscalculate U.S. resolve to continue providing security to Taiwan. Or Taiwan could take action such as declaring its independence, acquiring nuclear weapons, or cooperating closely with the Soviet Union, any of which might trigger a PRC reaction.

There are several possible "non-peaceful" alternatives open to Peking with regard to reunification. They include an economic boycott, a military blockade, seizure of the offshore islands, invasion of Taiwan, and nuclear blackmail.

An economic boycott could simply involve a statement that the PRC will not trade with countries doing business with Taiwan. In the short run, this could be more economically harmful to Peking than Taipei since some foreign countries have more trade with Taiwan than with the PRC.

A more effective way for the PRC to strangle Taiwan economically would be a military blockade, which some argue might have sanction in international law for those countries which regard Taiwan as part of China. The blockade probably would not require air superiority if Peking were to call on its 73 fleet class submarines. Without the U.S. Seventh Fleet, Taiwan has a very limited anti-submarine warfare capability. Since most of Taiwan's trade is shipped in foreign bottoms, however, Peking would risk the international implications of interfering with Western shipping.

The PRC would have some obvious military advantages in any attack on Taiwan. PRC assets include manpower, available weapons, and Taiwan's heavy dependence on military resupply. The PRC is reported to have some 700,000 troops available in the five military regions near Taiwan, compared to Taiwan's total force of 250,000 (excluding the offshore islands).

The PRC Air Force has an estimated 5,000 combat aircraft, but only a portion of that total might safely be deployed without weakening air defenses on the Soviet border. However, even using only 1,200 to 1,500 fighters, the PRC might eventually defeat the 316 better equipped and piloted Taiwanese combat aircraft and gain air superiority over Taiwan. In testimony before the Committee, Vice Admiral (Retired) Edwin Snyder concluded that the PRC might neutralize Taiwan's current air force in two to three weeks. The cost to the PRC air force, however, would be great.

The problems facing an invading force from the mainland would be immense even if the PRC gained limited air superiority. The PRC naval vessels available (750 in the East and South Sea fleets plus junks) could probably transport only 100,000–150,000 troops. A World War II study entitled Operation Causeway concluded in 1944 that it would take 300,000 U.S. troops to defeat the 32,000 Japanese ground forces then occupying Taiwan. According to official sources, an amphibious landing today on Taiwan would be extremely difficult given the PRC's limited command and control capability and limited surface vessels. There is no evidence that the PRC is attempting to gain an amphibious assault capability. PRC airlift capability is also limited. Finally, PRC naval air defense is not considered good, leaving the invading force vulnerable to counterattack. These difficulties lead to the conclusion that a conventional PRC attack against the island of Taiwan during the next few years probably would be unsuccessful given the current and projected force balances and dispositions.

c. *Taiwan and U.S. Security Interests.*—During the hearing process, the Committee made special efforts to examine Taiwan's direct importance to U.S. security interests. Special testimony was taken in executive session on this topic from the Chairman of the Joint Chiefs of Staff, and on another occasion from the Deputy Assistant Secretary of Defense for East Asian and Pacific Affairs and from Lt. Gen. Lawson, Director of Plans and Policy, JCS. Secretary of Defense Brown summarized the Administration's position on this issue during his public testimony by stating, "We now confront an Asia much less menacing to the United States than it appeared—and was—in the 1950's when the Russians and Chinese acted in concert".

Based on this testimony and a letter to the Chairman by Deputy Secretary of Defense Charles Duncan, the Committee concludes that the Administration believes that the island of Taiwan today is less important strategically to the United States than it was during the 1950's. The following quotations from Deputy Secretary Duncan's written response to the Chairman's inquiries illustrate this conclusion:

> At present our principal security concerns in Northeast Asia are the gradual buildup of Soviet military power in Asia and the Pacific, and the residual danger of conflict on the Korean peninsula. In Southeast Asia, we are concerned

about developments in Indochina and Vietnam's close association with the USSR which could lead to the establishment of Soviet bases there.

U.S. forces on Taiwan would not be well positioned to counter these components of the Soviet threat in Asia. The U.S. forces needed to assist the Republic of Korea in the event of a North Korean attack are either already in South Korea or would be deployed directly to South Korea in the event of an attack. While U.S. bases on Taiwan could be useful for logistics support and refueling purposes, they are certainly not essential for the successful defense of South Korea.

In our emphasis on the Soviet and North Korean threat, we do not discount completely the PRC just because we have diplomatic relations. However, the PRC threat to the United States and Taiwan is low and we position our forces to meet the most threatening.

With regard to logistics, we are taking actions to eliminate any adverse impacts that the removal of U.S. forces and installations from Taiwan would have on our ability to support our forces logistically.

In summary, the removal of U.S. forces and installations from Taiwan will not significantly affect either our regional military posture or strategy. Specifically, they will not directly affect our ability to counter the most likely threats to peace in Asia and we are taking steps to eliminate any adverse impact that the removal of U.S. forces and installations from Taiwan would have on our capacity to support our forces logistically.

Despite a possible reduction in Taiwan's strategic importance to the United States since the 1950's, a non-peaceful resolution of the Taiwan issue would threaten the peace and security of the Western Pacific area. An armed attack on Taiwan would have a severe impact on America's other allies and friends throughout Asia. Hostilities could escalate and spread to other parts of the region.

A PRC armed attack or other hostile action against the 17 million people of Taiwan who have long relied upon the United States for their security would pose grave problems for the United States. The long United States-Taiwanese association would make it extremely difficult for the United States not to respond firmly to hostile activity directed against Taiwan. A United States failure to respond firmly would have grave consequences for America's international standing, and would seriously weaken the confidence of America's other allies in the reliability of United States protection.

d. *Impact on U.S. Forces in the Western Pacific.*—During the hearings, the Chairman requested information on the impact of recognition of the PRC on the U.S. force posture in the Western Pacific. Deputy Defense Secretary Duncan provided the following response:

The terms of normalization require the removal of the approximately 700 military personnel on Taiwan by April 30, 1979. No combat forces are involved; our last combat units were withdrawn in 1975. These forces performed functions related to the 1954 Mutual Defense Treaty. They included the following: (1) Command element (95); (2) Communications element (146); (3) Forces to maintain auxiliary U.S.

facilities in caretaker status at two operational Taiwan air bases and War Reserve Materiel (WRM) in ready-to-use condition (206); and (4) Support organizations that include a U.S. Naval hospital, a dental clinic, finance office, and logistical and transportation units (253). When the withdrawal of U.S. forces from Taiwan is completed, the Taiwan Defense Command will be dissolved. However, a small working group, called the Provisional Plans Office, will be established at CINCPAC Headquarters in Hawaii to handle matters pertaining to the Mutual Defense Treaty until the end of 1979. Military personnel withdrawn from Taiwan will be reassigned to fill requirements worldwide.

We do not expect changes in the size, structure or deployments of our forces (beyond removal of military personnel from Taiwan) as a result of normalization of relations with China.

As the President has stated, with the exception of our plans gradually to withdraw U.S. ground combat forces from South Korea, we will sustain and strengthen our military deployments in the Western Pacific. We are already replacing older destroyers with the new and more powerful DD–963 *Spruance* class. The *Perry* class FFG and the *Los Angeles* class SSN–688 will soon be deploying with the Seventh Fleet, and by early 1980, all four "large deck" aircraft carriers in the Pacific Fleet will carry F–14 aircraft instead of the older F–4J. We have already exercised the E–3 AWACS aircraft in the Western Pacific and, beginning in 1980, AWACS will be deployed full-time to Japan. Air Force F–14's will be replaced, in part, by F–15's, beginning in late 1979, and other F–4's several years later by F–16's. Our ability to deploy additional ground forces into the theater will also improve as we expand our strategic airlift capacity.

e. *U.S. Arms Sales to Taiwan.*—The recognition of the PRC as the sole legal representative of China creates a requirement for additional legislation to make Taiwan eligible for arms sales under the Arms Export Control Act. Section 102(a) of the Committee bill satisfies this requirement.

More than 95 percent of Taiwan's current military inventory consists of U.S. weapons, either purchased directly or produced under U.S. license. No other countries are reliable suppliers for Taiwan. Taiwan is, therefore, concerned about the administration's one-year freeze on new arms sales commitments and about any restrictions on arms sales after 1979. Taiwan has, in fact, presented the United States with a massive arms shopping list which includes advanced fighter aircraft. Several witnesses testifying before the committee shared Taiwan's concern about the one-year arms sale freeze. Vice Admiral Snyder stated that "several vital weapons that Taiwan really needs have been withheld from them for political reasons".

The Committee believes that the impact of the one-year freeze will be limited if adequate new sales agreements are made beginning in 1980. Arms sales commitments made by the President in 1978 (worth $554 million) will be honored. Congress will soon receive notifications for letters of offer for three such cases (F–5E coproduction, Maverick

missiles, and laser target designators). All deliveries of sales previously approved by Congress will continue in 1979. The arms delivery pipeline is estimated by the Defense Department to be worth about $720 million, including the F–5's and Mavericks. Other major items in the pipeline include Improved Hawk and Chapparal surface-to-air missiles, Sidewinder air-to-air missiles, and 155 mm. Howitzers.

The long-run impact of normalization on arms sales to Taiwan will depend upon how the President's policy of sale of defensive weapons on a restricted basis is implemented. To make clear how this policy should be implemented, the Committee bill states in section 114 of its bill that it is the policy of the United States to assist the people on Taiwan to maintain a sufficient self defense capability through the provision of arms of a defensive character.

According to information available to the Committee the following weapons systems have been or are being considered for sale to Taiwan:

Fighter Aircraft.—Taiwan wants a fighter aircraft with both an all-weather and Sparrow missile capability. This would provide Taiwan with air defense in poor weather to replace the aging F–104's and a radar-guided air-to-air missile with a longer-range than the heat-seeking Sidewinders now in Taiwan's inventory. Several alternatives have been considered but none appears to suit both Taiwanese and U.S. needs.

F–4's.—Taiwan has for years requested 60 F–4 aircraft, but the United States has turned down the request because of the F–4's range and massive payload capabilities. The PRC might perceive it as an offensive weapon.

Kfir.—Taiwan reportedly used the possible purchase of Israeli Kfirs to try to force the sale of comparable U.S. F–4's. The United States agreed to the Kfir sale (and its U.S. components). Taiwan, however, decided primarily for political reasons not to purchase the Kfir.

F–16.—Taiwan has requested the F–16, but its 600-mile combat radius and advanced avionics would make it more objectionable to the PRC than the F–4. General Dynamics, however, believes it can cheaply reduce the F–16's range, thrust, and avionics capability.

F–5G.—Northrop has begun to develop a new international fighter to succeed the F–5E. The F–5G would replace the two small J85 engines with one more powerful F404 engine (the F–18 has two such engines). It would also expand the cockpit and add a modified WX160 look-down all-weather radar system (the F–16 radar at ⅔ capability). The F–5G's capabilities would be similar to the F–4's but with a smaller payload. Northrop requires about 400 F–5G sales to make production profitable and Taiwan wants only 60. Production of the F–5G would require an exception to the President's arms transfer policy. The President has deferred a final decision on the F–5G for Taiwan.

More F–5E's.—Without agreement on the above options, Taiwan has requested coproduction of an additional 48 F–5E/F's (for a total of 250 F–5's). In addition, they may seek another 50 later this year. The 5–5E might be modified to provide for all-weather radar, but adding two 500-pound Sparrow missiles would greatly reduce its performance.

Surface-to-Air Missiles.—Taiwan currently wants at least three types of surface-to-air missiles from the United States: additional

Improved Hawks (range 25 miles); Seasparrows (range 20–30 miles); and additional Chapparals (range 11 miles). All are basically defensive weapons.

Anti-Shipping Missiles.—Taiwan currently has the Israeli Gabriel surface-to-surface missile (range 12.5 miles) and wants the U.S.-built Harpoon to destroy enemy shipping. The Harpoon, however, has a range of 120 miles and can be air launched, giving it what some argue is an offensive capability against the PRC. The Harpoon's guidance system is quite advanced.

Ground Attack Weapons.—Taiwan wants, and the Administration has approved, the sale of 500 air-to-ground Maverick missiles. The Mavericks are optically guided "fire and forget" missiles with an eight-mile range. They are used primarily to destroy fortifications and tanks. They can be fired from Taiwan's F–5E's. Taiwan also wants a large number of U.S. eight-inch Howitzers.

f. *Taiwan's Nuclear Option.*—The termination of the U.S.-ROC Mutual Defense Treaty could lead Taiwan to reconsider its nuclear option. The Committee received testimony stating that Taiwan has the capability to develop and produce a nuclear device quickly if the political decision were to be made. The Taiwan Power Company has two nuclear power plants nearing completion, two more under construction, and another two planned for operation in 1985. Spent fuel discharged from these plants would contain from 50 to 80 kilograms of plutonium a year. In comparison, 10 kilograms is more than enough to make a nuclear explosive. Taiwan does not now have chemical facilities to recover this plutonium. However, it did conduct some laboratory scale experiments for such recovery (reprocessing), which were discovered and discontinued under U.S. pressure.

The United States would probably know on a timely basis if Taiwan attempts to build a nuclear explosive device. Since 1972, inspections of Taiwan's nuclear power facilities have been made through a special three-way arrangement between the International Atomic Energy Agency, Taiwan, and the United States. This arrangement is not affected by the termination of diplomatic relations between the United States and Taiwan.

Most analysts conclude that it would be counterproductive for Taiwan to build a nuclear weapon. It would increase the risk of a PRC first strike and would provide Taiwan with little security given the limited Taiwanese delivery systems.

Finally, Taiwan's development of a nuclear explosive device could jeopardize its entire relationship with the United States. In his February 23, 1979 letter to the Chairman, Deputy Defense Secretary Duncan stated:

> Taiwan is well aware of U.S. concerns and interests in this area, and understands that not only would production of nuclear weapons jeopardize its continued fuel supply from the United States, but would also force the United States to reassess its intent to continue to sell defensive arms to Taiwan.

g. *Security Assistance Issues.*—Several other security assistance issues were reviewed by the Committee. First, by March 31, 1979, the U.S. Military Assistance Advisory Group will be withdrawn. Under current plans, about three members of the American Institute

in Taiwan would be responsible for military sales. Taiwan would purchase most of its arms in Washington, where letters of offer would be signed between Taiwan's instrumentality and the Washington office of the American Institute in Taiwan. Taiwan's funds would probably remain in the Foreign Military Sales (FMS) Trust Fund, but no final decisions have been made with regard to Taiwan's continued use of the Defense Department's computerized procedure for ordering weapons. No decisions have been made either with regard to visits by U.S. military mobile training teams and TDY technical teams, or with regard to military training in the United States for Taiwanese, but that most military training probably will be conducted by civilian firms. The military advisory and training functions performed by the U.S. Government prior to January 1, 1979, can in general continue through other means if both parties show flexibility and imagination. The Committee believes that the United States should maintain a sufficient capability in Taiwan to insure continued logistical and technical support for those U.S.-built military systems currently in Taiwan.

Second, the modest foreign military sales credit program for Taiwan authorized for fiscal year 1979 has been reprogramed for other countries. There is no FMS credit program requested for Taiwan for fiscal year 1980.

And third, most of the estimated $40 million were of U.S. war-reserve material located in Taiwan will be removed. Ownership of some of this material, however, will be transferred to Taiwan, and legislation authorizing this transfer is contained in the administration's proposed International Security Assistance Act of 1979.

3. LEGAL ISSUES

Legal questions generated by specific sections of the bill are discussed at appropriate points in the section-by-section analysis. Several issues, however, do not relate to specific sections, and the Committee believes that these should be pointed out.

a. *International legal status of Taiwan.*—Considerable discussion has occurred concerning the status of Taiwan under international law. The Committee concluded that it was unnecessary, in drafting this legislation, to address this issue since, for purposes of United States domestic law, the Executive Branch can be empowered, statutorily, to treat Taiwan as if it were a state. This is, in fact, precisely what the bill does in section 102. As is discussed in the analysis of section 501, the issue also arises with respect to the President's directive of December 30, 1978, to departments and agencies of the Federal Government.

b. *Termination of the Mutual Defense Treaty with the ROC.*—On January 1, 1979, the President notified the Republic of China that, pursuant to Article X of the Treaty, the United States intended to terminate the Treaty as of January 1, 1980. Article X provides as follows:

Article X

> This Treaty shall remain in force indefinitely. Either party may terminate it one year after notice has been given to the other party.

Because the Treaty is being terminated in accordance with its own terms, no international obligation undertaken by the United States will be violated; the Treaty is not being "abrogated" or breached. Rather, the issue raised is whether the President may, without the concurrence of the Congress or the Senate, so terminate a treaty.

The answer is unclear.[1] The text of the Constitution provides little guidance; although the Treaty Clause, article II, section 2, clause 2, empowers the President, by and with the advice and consent of the Senate, to "make treaties," nowhere does the Constitution specify how treaties are to be "unmade". The intent of the Framers is ambiguous; contradictory statements appear to have been made by the few who addressed the question. And there is no Supreme Court case on point.

Although the Committee thus recognizes that any firm conclusion is impossible, it inclines to the belief that the President has not, in giving notice of termination pursuant to the Treaty itself, exceeded his constitutional authority. Senator Goldwater, who has brought an action in Federal court contesting the President's action, testified before the Committee. It was his position that the issue should be resolved in the courts and was not required to addressed by the Committee in this bill.

The principal argument against the President's action proceeds from the premise that since treaties, like statutes, are the supreme law of the land, treaties, like statutes, cannot be terminated by the President alone.

That premise is of questionable validity. Although the Congress has the last word in determining whether a statute is enacted, the Senate merely authorizes the ratification of a treaty; it is the President's role that is determinative. He decides at the outset whether to commence treaty negotiations. He decides whether to sign a treaty. He decides whether to seek Senate advice and consent. And he decides whether to exchange instruments of ratification after a treaty has been approved by the Senate. At each of these stages, it is the President who has the power to determine whether to proceed—*and thus whether treaty relations will ultimately exist.* It is not illogical, therefore, to conclude that the President's authority may include the right to terminate treaty relations.

The Committee emphasizes use of the word "may": the scope of the President's authority would appear to be a function of action taken—or not taken—by the legislative branch. An incompatible expression of the will of the Congress—or of two-thirds of the Senate—would, in the Committee's view, have placed the President's authority on far shakier legal ground. The widely praised analysis of Mr. Justice Jackson in *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 635–37 (1952) (Jackson, J., concurring) seems directly applicable. He suggested three categories for determining which branch prevails in the event of conflicting assertions of power:

> (1) When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all the Congress can delegate. . . .

[1] The Committee has compiled materials relevant to this subject which the Senate may find informative. They appear in the Committee Print entitled "Termination of Treaties: The Constitutional Allocation of Power," which may be obtained from the Committee.

> (2) When the President acts in the absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. . . .
>
> (3) When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only on his own constitutional powers minus any constitutional powers of Congress over the matter. . . .

Under this formulation, termination by the President of the U.S.-R.O.C. Defense Treaty would fall within the "zone of twilight" of category (2) and the President would, accordingly, appear to possess the constitutional authority to do so absent any statute enacted by the Congress or resolution adopted by two-thirds of the Senate directing contrary action; such measures would place the President's action in category (3). Similarly, his actions would have fallen within category (3) had the Congress enacted a statute prohibiting him, prospectively, from terminating a treaty by himself, or had the Senate done so by so providing in a reservation to the treaty itself or in a two-thirds resolution. The authority of the Congress and of the Senate to control presidential action in the area seems consistent with *Van der Weyde* v. *Ocean Transport Co.*, 297 U.S. 114 (1936), in which the Supreme Court held that the Congress can legally direct the President to terminate a treaty.

It appears to the Committee, therefore, that the constitutional prerogatives of the Congress and the Senate have not been invaded in that neither the Congress nor the Senate has elected to exercise the powers granted it by the Constitution to participate in the process of treaty termination. Had either done so, a different conclusion would likely obtain.

Historical precedent comports with this analysis. In no instance has any President terminated a treaty in the face of the express opposition of the Congress or two-thirds of the Senate. Although the Senate may find custom and practice of some interest, the Committee is hesitant to cite historical precedent for further purposes; its comments in its report on the Panama Canal Treaties are worth reiterating:

> As the Committee has noted in the past, it does not believe that a constitutionally questionable practice, by mere repetition, becomes more constitutional. S. Rept. 94–605, January 30, 1975 (94th Congress, 2nd Session) at 15. The Constitution is not amended by violation; express prohibitions and requirements, such as those contained in the declaration-of-war clause, the treaty clause, and the disposal-of-property clause, are not expunged through non-observance. Nonetheless, historical precedent can be useful for corroborative purposes—not to show what the Constitution has become or what it should be, but rather as evidence that a given construction of that document is grounded on experience as well as logic. Executive Rept. No. 95–12, February 3, 1978 (95th Congress, 2nd Session) at 68.

(c) *The American Institute in Taiwan.*—The intent of the legislation is to preserve existing commercial, cultural and other unofficial relations by authorizing the continuation of existing agreements, statutory programs and other relevant sections of U.S. law. It also makes provision for an entity through which future relations between

the United States and the people on Taiwan are primarily to be conducted: the American Institute in Taiwan. The Institute is a private corporation, organized under the Nonprofit Corporation Act of the District of Columbia. (See Appendix 2 for the Articles of Incorporation.) Its activities will be controlled by means of a contract executed between the Institute and the Department of State. (See Appendix 3 for the draft contract.)

The United States has on many occasions contracted with nongovernmental organizations to undertake specific activities in the field of foreign policy. Examples are contracts between the U.S. Government and American universities (both public and private) to carry out training programs as part of foreign aid programs, and contracts with private business firms to undertake economic development projects abroad.

However, the Committee is not aware of (and the Administration has not cited) any prior examples in which such extensive and varied functions as are normally performed by governmental entities have been authorized to be performed by nongovernmental entities. It is unlikely that such an arrangement would be struck down on legal grounds as an "excessive delegation" since that doctrine has had little viability in American law for the past forty years—especially in the foreign affairs area. But concern was expressed in the hearings and by individual Senators regarding the desirability of such an arrangement from a policy standpoint. These concerns prompted many of the changes and additions made by the Committee to the legislation originally proposed by the Administration, expecially with respect to issues of oversight, including the reporting of agreements concluded through the Institute, consultation on the appointment of its Trustees and officers, and annual review of its operating budget.

In effect, the Committee has chosen to accept the Administration's contention that the uniqueness of the situation, and the importance of both normalizing relations with the People's Republic of China and maintaining relations with the people on Taiwan, warrant the extraordinary arrangements envisioned in this bill. At the same time, the Committee has written into the legislation a number of provisions which safeguard the powers and prerogatives of the Congress respecting the functions normally performed by government which are to be performed in this case by the Institute. Finally, the Committee added a new section 106(b) assuring that the provisions of this bill will preempt any provision of state or local law with which it might be deemed to come into conflict as a result of the privately incorporated nature of the Institute.

4. INTERNATIONAL POLITICAL IMPLICATIONS

During its hearings, the Committee reviewed the international political implications of U.S. recognition of the People's Republic of China. It considered both the implications for U.S. interests in Asia and the Asian reaction.

a. *Implications for U.S. Interests in Asia.*—Committee witnesses generally agreed that American interests in Asia at least temporarily coincide with Chinese interests, with both countries desiring to preclude the growth of Soviet influence along China's frontiers. Peking's new relationship with the United States has also reduced the possibility

of a major Sino-American conflict in Asia; and it has made the Chinese less likely to disrupt the political order and economic stability of the non-Communist Asian states—which are important to the United States—for fear that turmoil there could open opportunities for Soviet expansion.

This approach has particular implications for Taiwan. Chinese leaders have repeatedly stressed their "peaceful" intentions toward Taiwan, and they have implied strongly that Peking has no intention to disrupt the economic progress of the islands, but would like to begin trade and cultural exchanges with Taiwan. Peking has not referred recently to possible Soviet interest in Taiwan, but it almost certainly judges that Taiwan's continued close trade relations with the United States and continued U.S. arms sales to the island are a better alternative than a precipitous U.S. withdrawal that might prompt Taipei to seek Soviet support.

The impact of normalization on longer-term prospects for Asian stability and U.S. interests in the region remain somewhat unclear. Despite the establishment of Sino-American diplomatic relations, China still remains an unpredictable major power in Asia. Past experience has shown that the Chinese might be inclined to make substantial changes in their foreign policy orientation in the event of a major change in the makeup of the Chinese leadership, which could be caused, for example, by the passing of Vice Premier Teng Hsiao-p'ing, a major setback in China's very ambitious economic programs, or by some other major domestic difficulties. In addition, substantial changes in the foreign policies of either the Soviet Union or the United States could prompt shifts in China's foreign policy. U.S. interests in Asia and those of its allies there could suffer if Peking significantly alters its current approach to the region. Sino-American normalization is unlikely to provide the United States with sufficient leverage with which to preclude adverse changes in Chinese foreign policy, but does provide a limited protection if such domestically inspired changes take place.

b. *Asian Views on Normalization.*—Asian governments and the Soviet Union have been anticipating Sino-American diplomatic relations since 1972. With the exception of the U.S.S.R. and Vietnam, most governments have welcomed the decision. However, Asian countries will monitor how the United States deals with the security of Taiwan, and final judgments will await evidence that a peaceful resolution to the Taiwan issue is probable. The Japanese are particularly concerned that U.S. recognition of Peking not affect Taiwan's continued existence and de facto ability to act as an independent entity.

The precedent of the United States terminating a security treaty is troubling to the South Koreans, but President Park believes normalization will—in the long run—help to reduce tensions on the Korean peninsula.

The Soviet position appears somewhat preemptive, designed to forestall any movement toward Sino-American military cooperation. The Soviets, however, appear to have no reservations about a normal diplomatic or economic relationship that excludes military relations or active diplomacy directed against the Soviet Union. In particular, the Soviets fear a U.S.-Japan-China alliance against the Soviet Union.

5. IMPACT ON ECONOMIC RELATIONS

a. *General.*—Taiwan's GNP in 1978 was $21.9 billion with a per capita income of about $1,200. Its economic transformation since 1950 from an agricultural economy, through light industrial manufacturing, toward an emphasis on heavy industry and value-added products is one of the relatively rare successes in economic development in the Third World. The average rate of real economic growth has exceeded ten percent since 1965 (aside from the world recession of 1973–74) and was estimated at 13 percent in 1978. Taiwan's principal economic problems are inflation and a small domestic market.

b. *Trade.*—Because Taiwan is an island with limited natural resources, its economic future is hinged upon its ability to import raw materials and export manufactured products. In 1977, Taiwan exported $9.3 billion and imported $8.5 billion worth of goods and services.

The composition of Taiwan's foreign trade has not changed markedly in recent years. Exports continue to be dominated by consumer goods produced by light industry. Textile exports remain the most important category. Electrical machinery and appliances are next in importance, with 15–16 percent of the total. Imports are almost one-third heavy equipment, machine tools, and transportation equipment and more than half food and raw materials. Consumer goods imports are minor.

TAIWAN'S MAJOR TRADING PARTNERS

[In percent; 1st half 1978]

	Percent share of ROC foreign trade	Exports	Imports
1. United States	32.3	40.9	22.3
2. Japan	21.9	11.8	33.4
3. Hong Kong	4.2	6.8	1.5
4. West Germany	4.2	4.8	3.3
5. Saudi Arabia	3.8	2.4	5.6
6. Kuwait	3.5	.7	6.5
7. Indonesia	3.1	2.7	3.4
8. Other	27.0	29.9	24.0
Total	100.0	100.0	100.0

The importance of the U.S. market as a destination for Taiwan's exports is overwhelming and, therefore, crucial to insuring future commercial viability. Two-way trade is estimated at $7.3 billion for 1978, with Taiwan enjoying a $2.5 billion bilateral trade surplus. Much of the surplus is in textiles and in August, 1978, an agreement was reached to curb textile exports.

The Committee bill contains several provisions in Title I which insure that the United States will be able to continue unhampered its current trading relationship with Taiwan. Export-Import Bank loans and guarantees—currently totalling $1.8 billion—will also be continued.

c. *Foreign Investment.*—American private investment in Taiwan now exceeds half a billion dollars and represents about 30 percent of all foreign investment on the island. Continued U.S. investment is important to continued economic growth in Taiwan, and among other factors, depends upon investor's perceptions of Taiwan's political and upon military stability. The list below summarizes current U.S. private investment in Taiwan.

	Thousands	Percent of total U.S investments approved
Electrical and electronics	$299,074	55.5
Chemicals	108,704	20.2
Banking and insurance	30,073	5.6
Services	16,025	3.0
Plastic and rubber products	15,213	2.8
Basic metals and metal products	14,109	2.6
Machinery and instruments	9,670	1.8
Construction	8,303	1.5
Transportation	7,222	1.3
Food and beverages	5,077	.9
Non-metallic minerals	4,955	.9
Garments and footwear	2,485	.5
Textiles	2,089	.4
Pulp and paper	1,895	.4
Trade	1,326	.2
Leather and fur	816	.2
Lumber and bamboo	776	.1
Fisheries and livestock	542	.1
Other	10,246	1.9
Total	538,600	100.0

In the past, the United States has provided Overseas Private Investment Corporation insurance and guarantees to Taiwan totaling $144 million. The Committee bill contains a section 112 which will allow OPIC to continue its programs in Taiwan, despite a $1,000 per capita income OPIC country ceiling. The Committee recommends this action to encourage continued U.S. private investment in Taiwan.

E. Section-by-Section Analysis

The Title

The title of the bill, as amended by the Committee, makes clear that the maintenance of commercial, cultural, and other relations between the people on Taiwan and the United States is authorized by the Congress.

Short Title

The Committee amended the bill to include a short title, the "Taiwan Enabling Act."

TITLE I

Section 101.

Subsection (*a*) specifies that laws, regulations, and orders which refer or relate to "foreign countries", or use similar terms, shall continue to apply to the people on Taiwan. It continues the eligibility of the people on Taiwan under such statutes as the Arms Export Control Act, the Atomic Energy Act of 1954, the Export Administration Act, the Export-Import Bank Act, the Foreign Assistance Act of 1961, the Mutural Educational and Cultural Exchange Act of 1961, the Trade Act of 1974, and the Foreign Sovereign Immunities Act of 1976. The section applies to existing case law as well as to statutes; thus, the people on Taiwan will be entitled to the act of state doctrine. It is the view of the Committee that the authority conferred by this section is legally necessary for the continued applicability to the people on Taiwan of the statutes affected.

Subsection (b) defines the term "people on Taiwan" to include the governing authorities on Taiwan and the people governed by those authorities on the islands of Taiwan and the Pescadores, as well as the organizations and other entities formed under the laws of Taiwan. Whether the term refers to authorities or to people will depend on the context in which it is used. The phrase "recognized by the United States prior to January 1, 1979 as the Republic of China" is intended only to make clear that for domestic legal purposes the bill applies to the governing authority of Taiwan by whatever name it may be referred to and to guarantees and other obligations incurred or undertaken before or after January 1, 1979.

The Committee, through this definition, intends to effect no change with respect to United States policy concerning the islands of Quemoy and Matsu.

Section 102.

Subsection (a).—This section provides that legal requirements for the maintenance of diplomatic relations with the United States or recognition of a foreign government by the United States will not be a bar to eligibility of the people on Taiwan for participation in programs, transactions or other relations under U.S. law. This will avoid questions under provisions of law such as section 620(t) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(t)), which refers explicitly to severance of diplomatic relations. It is also intended to satisfy requirements for diplomatic relations with, or recognition by, the United States which might be implied by terms such as "friendly country" contained in various statutes, such as those governing military sales and assistance (22 U.S.C. 2311, 2751), the activities of the Overseas Private Investment Corporation (22 U.S.C. 2191), and expenditures of funds received pursuant to the Agricultural Trade Development and Assistance Act of 1954 (22 U.S.C. 1922). The Committee regards the authority conferred by this section as legally necessary to permit the United States Government to carry out such programs and continue to conduct relations with the people on Taiwan.

Subsection (b) is directed at preserving the legal status quo of private persons on Taiwan, including both natural persons and juridical entities. It provides that the rights and obligations of such persons under the laws of the United States are not affected by the normalization of relations with the People's Republic of China.

Section 103.

This section removes any uncertainty concerning the status of the authorities on Taiwan, and the instrumentality referred to in section 109, to sue and be sued in the Federal courts of the United States. However, it makes such access dependent upon reciprocity; the United States and the American Institute in Taiwan must be granted comparable access to the courts on Taiwan. The Committee expects that, in determining whether this condition has been fulfilled, the courts of the United States will accept the judgment of the Secretary of State. With respect to the application of the Foreign Sovereign Immunities Act of 1976, however, the Committee does not intend to interfere with the judgment of the courts with respect to the recognition of claims of sovereign immunity in individual cases. Such claims will continue to be decided by the courts on the basis of the principles set forth in that legislation.

Section 104.

This section was added by the Committee to remove any doubt concerning the validity of the international agreements in force between the United States and the entity recognized as the Republic of China prior to the normalization of relations with the People's Republic of China. Its effect is to make clear that these agreements have not "lapsed" and that they continue in effect between the United States and the people on Taiwan. The reference to all courts "in" the United States expresses the Committee's intent that this rule of substantive Federal law be applied by both Federal and State courts.

Section 105.

This section authorizes the President and departments and agencies to carry out programs, transactions and other relations with the people on Taiwan under laws which provide for such programs, transactions and relations with respect to foreign countries. Such activities should be carried out in accordance with the applicable laws of the United States. The Committee regards this section as legally necessary to give the President and departments and agencies the authority to conduct and carry out U.S. programs, transactions, and other relations authorized or required by law with respect to foreign countries, nations, states, governments, or similar entities, with the people on Taiwan. This will assure the continuation of authority for such important programs as arms sales, nuclear exports, and Export-Import Bank financing.

Section 106.

Subsection (a) provides that programs, transactions and relations with respect to the people on Taiwan will be conducted by or through the American Institute in Taiwan, in the manner and to the extent directed by the President. This provision implements the President's statement of December 15, 1978, that the American people and the people on Taiwan "will maintain commercial, cultural and other relations without official government representation. . . ." The American Institute in Taiwan is a nonprofit corporation organized under the laws of the District of Columbia, which has been established for this purpose. The Administration's version of this section was amended to make it completely clear that while U.S. relations with the people on Taiwan will be carried out principally through the American Institute in Taiwan, this need not be the only channel for such relations without official government representation. . . ." The American Institute in Taiwan is a nonprofit corporation, organized under the the Institute, substituted the words "in the manner and to the extent directed by the President" for the words "as the President may direct." This makes clear that the President may conduct relations with the people on Taiwan in a flexible manner, having, for example, the Export-Import Bank work with commercial banks in making loans. The Committee regarded this subsection as legally required to provide the President or departments or agencies of the United States Government with the authority to carry out programs, transactions or other arrangements with the people on Taiwan through the American Institute in Taiwan.

Subsection (b) of section 106, added by the Committee as proposed by Senator Javits, applies the Preemption Doctrine to any state or local laws that may conflict with provisions of the statute under which

the Institute operates. The supremacy clause, clause 2 of article IV of the Constitution, provides that Federal law takes precedence over any State law to the extent that the two cannot both stand, and it has been further construed as allowing the Congress to "occupy the field," or preempt, State legislation in carrying into execution its enumerated powers. It is the intent of the Committee, in including this provision, to require that the Institute be treated by State and local law for this purpose on the same basis as an agency of the United States Government.

Section 107.

This section was offered as an amendment to the Administration's bill by Senators Pell, Javits, and Percy, replacing an earlier related amendment by Senator Pell. This section authorizes the American Institute in Taiwan to undertake a policy of furthering human rights when and as appropriate. Senator Javits suggested that for the purpose of this section the applicable definition of human rights should be that contained in the Helsinki Declaration.

The Committee made clear that this section was not to be construed as authority for Institute officials to intervene in Taiwan's domestic affairs by favoring one or another group of people on Taiwan, or by strengthening United States links with any particular group on Taiwan, nor was it to be construed as giving the Institute official status. The Committee also specified that Institute officials were not authorized to become involved in matters affecting the international status of Taiwan.

Section 108.

This section provides for the performance and enforcement of existing agreements, and the making of new agreements, with the people on Taiwan by or through the Institute, to satisfy authorizations or requirements for agreements or arrangements with the people on Taiwan. If, for example, an agreement with a "foreign country" is a condition of eligibility for participation in a program with respect to the people on Taiwan, such a condition will be satisfied by an agreement entered into or performed through the Institute. This section applies not only to new agreements, but also to previous agreements, which remain in force unless terminated.

The Committee regarded this section as legally necessary to authorize the United States Government to perform, enforce, or have in force agreements or arrangements or enter into new agreements or arrangements. The Committee also changed the words "as the President may direct" in the Administration's bill to "in the manner and to the extent directed by the President" to emphasize the flexibility accorded to the President.

Section 109.

This section provides for dealing with the people on Taiwan through an instrumentality acting on their behalf. It makes clear that provisions for dealing with a "foreign government" will be satisfied with respect to the people on Taiwan by dealing with that instrumentality. Sections 106 and 108 and this section provide for the conduct of nongovernmental relations through the Institute and the counterpart instrumentality of the people on Taiwan. The instrumentality referred to in this section thus is not considered an instrumentality of the people on Taiwan as that term is defined in section 101(b).

For example, the Arms Export Control Act authorizes sales of defense articles and defense services to foreign countries, and requires those countries to agree to certain conditions and to provide certain assurances. Under the bill, these sales will be made by the Institute to the Taiwan counterpart instrumentality, and the agreements and assurances by that counterpart instrumentality will be accepted in satisfaction of the requirements of the Arms Export Control Act.

This section was regarded by the Committee as legally necessary to authorize the President and departments or agencies of the United States Government to conduct specified relations and actions with the people on Taiwan through an instrumentality established by the people on Taiwan. The Committee also changed the words "as the President may direct" in the Administration's bill to "in the manner and to the extent directed by the President" to emphasize the flexibility available to the President in dealing with the people on Taiwan.

Section 110.

This section provides that when the application of United States law depends upon foreign law, the law actually applied by the people on Taiwan shall be looked to for that purpose. The provision does not affect the enforceability of judgments rendered by the courts on Taiwan.

The Committee expects that courts in the United States will continue to enforce judgments rendered by courts on Taiwan and that, on a reciprocal basis, the courts on Taiwan will continue to enforce judgments rendered by the courts in the United States.

Section 111.

Subsection (a).—This provision assures that the withdrawal of recognition does not affect the ownership of property owned by Taiwan in the name of the Republic of China as of December 31, 1978 or thereafter acquired or earned by them. However, the section does not apply to the ownership of diplomatic real properties situated in the United States and acquired by the Republic of China before October 1, 1949, such as the former embassy at Twin Oaks, or property held by international organizations.

For purposes of section 25 of the Federal Reserve Act (12 U.S.C. section 632) reference to "a representative of such foreign state who is recognized by the Secretary of State as being the accredited representatives of such foreign state to the Government of the United States," shall include the representative of an instrumentality established by the people on Taiwan.

The Committee regarded this section as legally necessary to make clear that United States recognition of the People's Republic of China as the legal government of China does not affect ownership of, or other rights or interests in, properties, tangible and intangible, and other things of value, owned or held on December 31, 1978, or thereafter acquired or earned by the people on Taiwan except for diplomatic real properties situated in the United States which were acquired prior to October 1, 1949.

Senator Helms, who had proposed an amendment covering similar matters, withdrew his amendment when this section was approved by the Committee.

Subsection (b).—This provision intended to protect U.S. persons who, prior to January 1, 1979, acquired, or thereafter acquire, contract or property rights or have claims against the governing authority on

Taiwan, recognized by the United States prior to January 1, 1979, as the Republic of China and its instrumentalities and agencies. Withdrawal of recognition of the Republic of China does not affect the contractual obligations and debts which it and its instrumentalities incurred prior to January 1, 1979, or may incur in the future. Such obligations will continue to be enforceable (on the same basis) in courts in the United States. For example, if after January 1, 1979, a U.S. bank makes a loan to a Taiwan entity, which loan is guaranteed by the authorities on Taiwan or their instrumentality, such authorities or their instrumentality remain suable in courts in the United States on the loan guarantee on the same basis as would have been the case prior to January 1, 1979. Similarly, the people on Taiwan have continued access to courts in the United States on the same terms as obtained prior to derecognition. The Foreign Sovereign Immunities Act of 1976 will continue to apply to the authorities on Taiwan and their agencies and instrumentalities to the extent it did prior to January 1, 1979. Finally, the term "United States persons" used in section 111(b) is intended to have the broadest possible meaning, including, but not limited to, the meaning of the comparable term used in section 11(2) of the Export Administration Act of 1969 as amended, as well as all persons doing business in the United States who may become involved in litigation in the United States relating to the people on Taiwan. The Committee regarded this subsection as legally necessary to insure that property rights, interests and obligations will not be affected in any way by the absence of diplomatic relations between the United States and the people on Taiwan or lack of United States recognition of a government of Taiwan.

Section 112.

Subsection (a), proposed by Senator Percy, directs the Overseas Private Investment Corporation (OPIC) to provide insurance, reinsurance, loans, or guaranties for projects on Taiwan without regard to the provision of Section 231 of the Foreign Assistance Act of 1961, as amended, which restricts eligibility for OPIC programs in countries with per capita incomes of $1,000 or more in 1975 United States dollars. Coincidentally, Taiwan's per capita GNP will have exceeded the $1,000 level this year for the first time, thereby making the availability of war risk, expropriation and inconvertibility insurance much more limited at a time when uncertainties about the island's future may have increased. The effect of this provision, therefore, is to waive a restriction which would otherwise begin to apply to OPIC programs with respect to investments on Taiwan.

Subsection (b), proposed by Senator Glenn, directs that OPIC not apply special or discriminatory criteria for its issuance of insurance, reinsurance, loans or guaranties with respect to investment projects on Taiwan as a result of the establishment of diplomatic relations between the United States and the People's Republic of China.

Subsection (c), also agreed upon by the Committee, directs the President to report to Congress within 5 years whether the waiver of the per capita restriction should continue with respect to Taiwan in light of prevailing economic conditions on Taiwan on the date of such report.

Senator Biden asked that he be recorded in opposition to the section.

Section 113.

In connection with this section, the Committee considered two bills introduced by Senator Dole (S. 8) and Senator Stone (S. 46). Senator Dole's bill called for the President to extend to any principal liaison office of the Republic of China established in the District of Columbia the same privileges and immunities as are enjoyed by diplomatic missions accredited to the United States. Senator Stone's bill called for extending full diplomatic privileges and immunities to all offices representing the Republic of China in the United States. Both bills were strongly opposed by the Administration on the ground that they would confer diplomatic status on an unofficial, nongovernmental body, and would be inconsistent with the unofficial character of United States relations with the people on Taiwan since January 1, 1979.

This section as approved by the Committee authorizes and requests, but does not direct, the President to extend to the instrumentality established by the people on Taiwan, and, as appropriate, to the members thereof, privileges and immunities comparable to those provided to missions of foreign countries, upon the condition that similar privileges and immunities are extended on a reciprocal basis to the American Institute in Taiwan.

This section as originally drafted was amended in two ways by proposals of Senator Stone. The Committee approved his suggestions that the words "as appropriate" be inserted before "the members thereof," and that the words "comparable to those provided by missions of foreign countries recognized by the United States" replace the words "subject to corresponding conditions and obligations which are necessary for the effective performance of their functions." Senator Stone indicated that he believed that the first change clarified the amendment by indicating that not all members of the instrumentality should be accorded such privileges and immunities as were granted, and that the second change broadened the privileges and immunities that the President could be expected to grant to the instrumentality. At the request of the State Department, Senator Stone agreed to drop the words "recognized by the United States" from his second proposed change.

Senator Stone asked the State Department to specify which of seven categories of privileges and immunities normally given to diplomats of foreign nations would be extended to the instrumentality established by the people on Taiwan. The State Department responded that the instrumentality would enjoy the following five privileges and immunities fully: (1) the privilege of a secure pouch; (2) the right to send and receive coded messages; (3) customs courtesies, involving such matters as freedom from customs inspections and duties; (4) tax exemption on income earned by the instrumentality and on the official income of the appropriate personnel of the instrumentality, but not for U.S. citizens or residents employed by it; and (5) inviolability of the premises of the instrumentality. As for the sixth category normally accorded diplomats, the appropriate members of the instrumentality would enjoy immunity from criminal prosecution and civil liability for any acts committed in the performance of their duties, but not for any acts they committed which were unrelated to their duties. The State Department said it did not plan

to grant the seventh privilege, the use of diplomatic license plates, to the members of the instrumentality because that appeared to be incompatible with its unofficial status. The State Department pointed out that the privileges and immunities it planned to grant the instrumentality are those derived from the International Organization and Immunities Act, which the United States gives to international organizations. The Committee also intends under this section that the instrumentality and its members and employees will be exempt from foreign agents registration requirements, and the State Department confirms that this will be the case.

Thus, under the language of this section, the President could be expected to grant full functional privileges and immunities to the Taiwan instrumentality and its employees. With respect to the premises and the organization itself, these are the same as the privileges and immunities enjoyed by foreign missions. With respect to employees, the privileges and immunities would be complete for all actions taken in the performance of their duties, but would not be absolute as they are for diplomats.

Section 114.

This section was proposed and adopted unanimously as an amendment to the Administration's original bill by Senators Church, Pell, Glenn, Javits and Baker. Its purpose is to express the strong and continuing interest of the United States in a peaceful solution to the Taiwan issue. This is done through a unilateral statement of United States policy objectives in subsection (a), which is supplemented by subsection (b), which sets forth what the United States will do to achieve the policy objectives set forth in subsection (a). The Committee made clear that each part of both subsections must be read and interpreted in the context of all the other parts and of the entire section. Thus subsection (b)(1), providing that the "United States will assist the people on Taiwan to maintain a sufficient self-defense capability through the provision of arms of a defensive character", relates not only to the objective of subsection (a)(4), "to provide the people on Taiwan with arms of a defensive character," but also to the objective spelled out in subsection (a)(1), "to maintain extensive, close, and friendly relations with the people on Taiwan."

Subsection (a)

The Committee discussed extensively the language in 114(a)(3) in connection with an amendment offered to it by Senator Percy. He proposed that the words "of grave concern to the" be replaced by the words "to the security interests of" on the ground that this would provide a stronger and clearer statement of United States policy toward Taiwan. This view received support from some Members of the Committee. Other Members argued that the phrase "of grave concern to the" United States adequately conveyed the importance that the United States should attach to a peaceful settlement of the Taiwan issue, especially when taken together with the other provisions of the section, while at the same time allowing the United States to respond in a flexible manner to any effort to resolve the Taiwan issue by other than peaceful means. The amendment proposed by Senator Percy was defeated by a vote of 10–4. Senator Percy had earlier reserved the right to discuss his amendment on the floor of the Senate and possibly to offer it there if it were rejected by the Committee.

Subsection (b)

The Committee made clear in its discussion of subsection (b)(1) that the United States was concerned with external threats or coercion rather than with internal challenges to the security or to the social or economic system of the people on Taiwan. In discussing the matter of possible coercion, the Committee indicated that the United States would maintain its capacity to resist not only direct force but indirect force as well, such as a blockade or a boycott, that would jeopardize the social or economic system of the people on Taiwan. During the hearings, several Senators emphasized the applicability of the anti-boycott provisions of the Export Administration Act to the China-Taiwan context. Those provisions make illegal compliance by U.S. citizens or corporations with economic boycotts against Taiwan.

The Committee also stressed the importance of assisting the people on Taiwan to maintain a sufficient defense capability through the provision of arms of a defensive character. The Committee indicated, in discussing (b)(2), that in assisting the people on Taiwan to maintain a sufficient self-defense capability, the United States was not limited solely to the supply of arms, but could assist in other appropriate ways. The Committee also indicated that the United States retained the right to determine what was "sufficient".

Paragraph (3) of subsection (b) directs the President to inform the Congress promptly of any threat to the security of Taiwan and any danger to the interests of the United States arising from such a threat. The language comprehends threats both military and non-military in nature, deriving from any source external to Taiwan. It should not be construed to derogate from the provisions of section 3 of the War Powers Resolution, which requires the President in every possible instance to consult with the Congress before introducing the United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances.

Paragraph (4) of subsection (b), added by the Committee as proposed by Senator Glenn and modified by Senator Javits, requires that any action taken by the United States to meet any danger described in paragraph (3) comply with all applicable constitutional and statutory requirements.

No mutual security treaty to which the United States currently is a party authorizes the President to introduce the armed forces into hostilities or requires the United States to do so, automatically, if another party to any such treaty is attacked. Each of the treaties provides that it will be carried out by the United States in accordance with its "constitutional processes" or contains other language to make clear that the United States' commitment is a qualified one—that the distribution of power within the United States Government is precisely what it would be in the absence of the treaty, and that the United States reserves the right to determine for itself what military action, if any, is appropriate.

Thus, an "absolute" security guarantee for Taiwan would go further than any current mutual defense treaty to which the United States is a party. In addition, it is questionable whether, as a matter of constitutional law, an absolute security guarantee can be made—either by treaty or by statute. Because the Constitution vests the power to declare war in the Congress rather than in the President, it is doubtful whether the authority to make that decision can constitutionally be

delegated to the President—i.e., whether he can be empowered prospectively to determine under what conditions the United States armed forces will be introduced into hostilities. Under the separation of powers doctrine, one branch of the government cannot, even willingly, transfer to another branch powers and responsibilities assigned to it by the Constitution.

Turning to the provision at hand, paragraph (4) of subsection (b), the Committee notes that the United States is not required or committed, under this provision, to take any action. The United States, and only the United States, will determine the existence of any danger described in paragraph (3). If the United States determines that such a danger exists, it and only it will determine what response, if any, is appropriate. While action taken by the United States may be military—provided that that action is in compliance with the War Powers Resolution—it may also be diplomatic, economic, or of some other form—and, indeed, it may be the judgment of the United States that the most effective action, from the standpoint of the United States or the people on Taiwan or both, is no action. This broad discretion is reserved for the United States through incorporation of the reference to the United States' "constitutional processes"; by requiring that any action taken by the United States be in accordance therewith, this provision makes clear that no automatic response of any kind is required, since those processes may result in a decision to do nothing. The net effect is thus to make clear that the allocation of war-making power within the United States Government is precisely what it would have been in the absence of the provision—that the President has no greater authority to introduce the armed forces into hostilities than he would have had had the provision not been enacted.

This conclusion is bolstered by section 8(a)(1) of the War Powers Resolution, which provides as follows:

> Sec. 8. (a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred—
>
> (1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this joint resolution. . . . .

The consequence of this provision is two-fold: (1) it precludes the President from inferring authority from paragraph (4) to introduce the armed forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances; and (2) it reinforces the non-automaticity of the United States' undertakings, since, unless the President were authorized to introduce the armed forces into hostilities, the United States could not be considered to have undertaken to respond, automatically, in the event of danger.

While the Committee inserted the reference to "procedures established by law" primarily to make clear that the War Powers Resolution is fully applicable to all actions taken in connection with this

section, it would note that the reference is not legally necessary since all provisions of the Resolution are applicable under their own terms. Accordingly, the inclusion of this reference in this bill should not be construed, in the case of some other, similar statute enacted in the future, as suggesting in any way that the absence of any such reference in that statute has rendered the Resolution inapplicable. The provisions of the Resolution will continue to apply *ex proprio vigore*.

TITLE II

Section 201.

This section authorizes departments and agencies to provide support for the Institute's internal operations through transfers of property and the performance of functions and services. This will provide access by the Institute to existing Federal resources in order to reduce costs and increase the efficiency of operations. It is expected that such support usually will be provided on a reimbursable basis.

The Committee regarded this section as legally required since it authorizes departments and agencies of the United States Government to transfer property to, and perform support functions and services for the operations of, a private organization.

Section 202.

This section authorizes departments and agencies to acquire and accept services from the Institute. Although the initial arrangements with the Institute are planned to be on a conventional contractual basis this section in the Administration's bill authorized the President to disregard normally applicable laws and regulations, such as limitations in procurement regulations, in order to permit the development of appropriate arrangements in these unique circumstances.

Section 202 was amended to restrict the authorization given the U.S. Government and the President to suspend the laws and regulations normally applicable when acquiring services from the Institute. As amended, this authority will be applicable only to those restrictions specified by the President in an Executive order which he has determined should not be applied in furtherance of the act. The amendment is based on section 633 of the Foreign Assistance Act, which is implemented by Executive order 11223. That section provides as follows:

> SEC. 633. Waivers of Certain Laws.—(a) Whenever the President determines it to be in furtherance of the purposes of this Act, the functions authorized under this Act, may be performed without regard to such provisions of law (other than the Renegotiation Act of 1951, as amended (50 U.S.C. App. 1211 et seq.)), regulating the making, performance, amendment, or modification of contracts and the expenditure of funds of the United States Government as the President may specify.

The basic purpose of this amendment was to give the President and the U.S. Government flexibility in dealing with the Institute in view of the unique nature of this endeavor, but to limit such flexibility in a manner similar to that specified in section 633 of the Foreign Assistance Act.

The Committee regarded this section as legally required because of the authority granted any department or agency to acquire and accept services from the Institute, if the President so directed, without regard to the laws and regulations normally applicable.

Section 203.

This section authorizes the transfer to the Institute of alien employees of the U.S. Government and preserves their benefits under the local compensation plan applicable in Taiwan under section 444 of the Foreign Service Act of 1946, as amended (22 U.S.C. 889). It is expected that the Institute will adopt this plan for its alien employees. This section also authorizes the continued participation in U.S. Government retirement systems by those transferred alien employees who have heretofore been covered by such systems, subject to continued payment of contributions and deductions to the appropriate fund.

The Committee regarded this section as legally necessary because alien employees of the U.S. Government would not otherwise be eligible to retain their allowances, benefits and rights after ceasing to be employed by the U.S. Government, nor would they be allowed to continue to participate in U.S. Government programs involving retirement or other benefits after ceasing to be employed by the U.S. Government.

Section 204.

This section, consisting of four subsections, provides authority for the separation of Federal employees for employment with the Institute, preservation of their Federal benefits, and reemployment in the Federal service in accordance with existing law. As a result of technical amendments added by the Committee. the section does not provide any additional rights for Government personnel. Rather, it provides for the continuation of existing rights such personnel had prior to entry on duty with the Institute. For example, an employee reinstated under this section would have no greater or lesser tenure than he or she previously had in the Federal service. It is contemplated that such separated Federal personnel will make up the staff of the Institute.

Subsection (a) provides that a Federal officer or employee who accepts employment with the Institute may be separated from his or her agency.

Subsection (b) provides that any officer or employee so separated is eligible upon termination of employment with the Institute, to be reemployed or reinstated in the Federal service. Normally, reemployment for an employee in the classified service will be to the position from which the employee was separated. However, the President is authorized to determine the appropriateness of the position for reemployment. It is anticipated that, especially in personnel systems based on the rank in person concept, reemployment could be in a higher class.

Subsection (c) provides for continuity of Federal benefits during service with the Institute, including compensation for job-related death, illness, or injury, health and life insurance, leave, and retirement. Contributions, where required, must be paid in order to preserve these benefits. This section also provides that death or retirement by a Federal employee separated under subsection (a) while employed by the Institute shall be considered a death in or retirement from the Federal service. The provision for continued eligibility to participate in Federal benefit programs is intended to permit the affected individuals to retain the opportunities they would have as Federal employees to elect changes in those benefits, as in the case of "open season" for changes in health insurance coverage.

Subsection (d) authorizes the extension of the benefits of title II of the bill to Federal employees serving with the Institute on leave without pay prior to the bill's enactment.

Section 205.

The following exchange of correspondence took place with respect to the language proposed to be inserted by the Committee in lieu of the Administration's section 205:

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C., January 30, 1979.

Hon. RUSSELL LONG,
Chairman, Committee on Finance,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: As you may be aware, the executive branch recently transmitted a copy of its proposed omnibus legislation providing for the maintenance of commercial, cultural, and other relations with the people of Taiwan.

I am enclosing a copy of that bill and would call to your attention section 205. That section raises certain questions on which I believe it would be extremely useful to have your Committee's views. I will bring your comments to the attention of the Committee on Foreign Relations during its markup of this legislation on February 7.

I appreciate your assistance and cooperation on this matter.

With best wishes,

Sincerely,

FRANK CHURCH,
Chairman.

Enclosure.

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C., February 5, 1979.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of January 30, 1979, relating to the Taiwan legislation. The Finance Committee does not plan to meet again until February 27, 1979, and so I will not have an opportunity to bring up the matter you raise with the Committee.

However, I am advised by the Committee staff that there is a defect in the draft submitted by the Administration in section 205, relating to the tax status of the American Institute in Taiwan. This defect is corrected in the draft language I am enclosing.

With every good wish, I am

Sincerely,

RUSSELL LONG,
Chairman.

Enclosure.

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C., February 26, 1979.

Hon. RUSSELL B. LONG,
Chairman, Committee on Finance,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of February 5 in response to my January 30 letter concerning the Taiwan legislation.

I appreciate the work of your Committee staff in revising the legislation and in submitting draft language correcting the defect found in S. 245's original language. The draft language your staff submitted has been included as an amendment to the bill which the Committee ordered reported on February 22.

Thank you very much for your assistance on this complex matter.

With best wishes,

Sincerely,

FRANK CHURCH, *Chairman.*

The Committee's analysis of the proposed amendment (prepared with the cooperation of the Finance Committee) is as follows:

The Institute and its employees.—This section provides that the Institute, its property, and its income are generally exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority of the United States. The only exception to this rule is for Social Security taxes of certain Institute employees, as discussed below. In addition, contributions to or for the use of the Institute will qualify (within the limits otherwise applicable) as deductions for Federal income, estate and gift tax purposes.

Employees of the Institute will be treated for Federal tax purposes in the same manner as employees of the Federal Government are treated. Thus, employees of the Institute will be exempt from tax on overseas allowances and benefits they receive which are equivalent to the tax-exempt overseas allowances and benefits received by civilian officers and employees of the United States Government (sec. 912 of the Internal Revenue Code). As a corollary, compensation paid to employees by the Institute will not be "earned income" qualifying them for the deduction or exclusion provided to individuals working in the private sector (secs. 911 and 913 of the Code).

As is the case with most Federal employees, the Institute and its employees generally will not be subject to Social Security (FICA) taxes and service for the Institute generally will not earn its employees quarters of coverage toward qualification for Social Security benefits. However, under section 204(c) of the bill, employees of the Institute who have been separated from Federal service are entitled to continue to participate in any benefit program in which they were covered prior to employment by the Institute. This includes the Social Security program. Thus, in the event that an Institute employee was covered by Social Security in his Federal employment immediately prior to separation, he or she will continue to be covered while employed by the Institute. In that situation, both the Institute and the employee will be subject to FICA taxes on wages paid by the Institute, and service for the Institute will be covered employment under title II of the Social Security Act. Former Institute employees may generally use their Federal service toward qualification for coverage

under State unemployment compensation programs. This coverage is pursuant to the right of Institute employees separated from Federal service to continue to participate in two benefit programs, Unemployment Compensation for Federal Civilian Employees and Unemployment Compensation for Ex-Servicemen. The Institute will not be subject to taxation under the Federal Unemployment Tax Act (FUTA).[2]

The governing authority of Taiwan and its employees.—Section 102 of the bill provides that whenever any law, regulation, or order, of the United States refers or relates to a foreign country, nation, state government, or similar entity, the term is to include, and the law, regulation, or order is to apply with respect to, the "people on Taiwan." Section 205(d) provides that, for tax purposes, the term "people on Taiwan" means the governing authority on Taiwan and its agencies, instrumentalities, and political subdivisions; as contrasted with the definition provided in section 101(b) for other purposes, the term does not refer to the people governed by that authority. Thus, any U.S. source income of the governing authority on Taiwan would be exempt from Federal income taxation to the same extent as the income of a foreign government (sec. 892 of the Code). (The exemption from tax for foreign governments would not apply to the people governed by that governing authority.) Similarly, employees of the governing authority on Taiwan would be exempt from Federal income taxation to the same extent as employees of a foreign government (sec. 893).

Income from Taiwan.—Because the governing authority on Taiwan is treated as a foreign country, taxes imposed by that governing authority will be treated as taxes imposed by a foreign country. Thus, Taiwanese real property taxes would generally be deductible (sec. 164 of the Code) and income taxes would be deductible or creditable (sec. 33 of the Code) if the other requirements of the Code are met. Section 205(d) of the bill also provides that when the term foreign country is used in a geographical sense for Federal tax purposes, the term means the islands of Taiwan and the Pescadores. Thus, for example, residence or presence in these islands would be treated as residence or presence in a "foreign country" to determine eligibility for the deduction for excess foreign living costs (sec. 913 of the Code).

Institute not an instrumentality of the U.S.—This section also provides explicitly that the Institute is not an agency or instrumentality of the United States, its employees are not employees of the United States, and, in representing the Institute, its employees are exempt from section 207 of Title 18, United States Code (relating to the disqualification of former government employees from certain representational activities).

Section 206.

This section provides that employees of the American Institute in Taiwan may be authorized by the Institute to perform specific acts that are necessary for business purposes and in connection with deaths abroad. The Committee regarded this section as legally necessary so that such acts will be valid in the United States.

[2] Because the Institute is not an instrumentality of the United States, sections 3112 and 3308 of the Internal Revenue Code, relating to the requirements for exemption from FICA and FUTA taxes, do not apply.

TITLE III

Section 301.

This section authorizes appropriations to the Secretary of State of funds necessary to carry out the bill. It is contemplated that the funds necessary for the operation and support of the Institute on behalf of all departments and agencies will be consolidated into a single account. However, this section preserves the continued ability of departments and agencies to utilize the Institute for the performance of functions involving the use of funds appropriated to the department or agency concerned. Funds appropriated under this section could be made available until expended.

The Committee adopted an amendment to this section, offered by the Chairman, which made the authorization effective for fiscal year 1980 only. The effect is to eliminate the permanent authorization proposed by the Administration and substitute, in effect, a requirement for annual authorizations. The Committee expects that annual review of budgetary matters involving the Institute will aid it in carrying out its oversight responsibilities more effectively.

Section 302.

This section authorizes the Secretary of State to use the funds made available under the bill to further the maintenance of commercial, cultural, and other relations with the people on Taiwan on an unofficial basis. In particular, it authorizes the Secretary to provide these funds to the Institute for this purpose. The use of appropriated funds by the Institute will be governed by an appropriate contractual arrangement with the Secretary of State, which will contain limitations on expenses, such as limitations on the compensation of Institute employees. The Institute will be required under this arrangement to adhere generally to the limitations applicable to Federal employees.

The Committee regards this section as legally necessary because it authorizes the use of U.S. Government funds made available under the bill to further United States relations with the people on Taiwan by providing such funds to a private organization.

Section 303.

This section requires that departments and agencies assure access by the Comptroller General to the Institute's books and records, and that they provide the Comptroller General the opportunity to audit the Institute's operations.

Section 304.

This section authorizes the President to prescribe appropriate rules and regulations to carry out the bill's purposes. The section was amended by the Committee ensure that all rules and regulations, public or classified, will be transmitted promptly to the Committee. The Committee regarded the amendment as legally necessary because it imposes a specific reporting requirement on the Executive Branch.

TITLE IV

Section 401.

This section, like the amendment offered by the Chairman to section 301, is directed at ensuring more effective congressional oversight of the Institute's activities. Subsections (a) and (b) require the Secretary of State to transmit to the Congress agreements between the Institute

and the Taiwan instrumentality (or the Taiwan authorities) as though those agreements were subject to the Case Act. It is the Committee's intent that trivial and inconsequential agreements not be transmitted, just as they are not under the Case Act. These subsections also require the reporting of agreements between the Institute and U.S. Government agencies even though these are not of the character of international agreements.

Subsection (c) ensures that procedures parallel to all currently applicable notification, review, and approval procedures will apply to agreements and other transactions by or through the Institute. Those include procedures for international agreements, such as those under section 123 of the Atomic Energy Act, as well as procedures applicable to other transactions, such as those set forth in sections 3(d) and 36(b) of the Arms Export Control Act.

Section 402.

This section, which was an amendment proposed by Senator Stone, was adopted by the Committee so that it would be kept informed on a regular basis of developments in economic relations between the United States and the people on Taiwan, especially as regards any interference with normal commercial relations. The Committee's decision reflected its concern not only over such possible interference with normal commercial relations but also the fact that economic relations between the United States and the people on Taiwan will be conducted in a unique manner. The Congress may need to consider further legislation on this matter if unforeseen problems arise during the period that new methods and procedures for conducting such economic relations are established. The Committee regarded this section as legally necessary because it imposes a specific reporting requirement on the Secretary of State.

In response to concerns raised by Committee members regarding the accountability of trustees of the Institute, the Committee received the following letter from Secretary Vance:

THE SECRETARY OF STATE,
Washington, February 23, 1979.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations,
U.S. Senate.

DEAR MR. CHAIRMAN: As you know, under the articles of incorporation and bylaws of the American Institute in Taiwan, the Secretary of State appoints and removes the trustees of the Institute.

Because the Institute is not an agency or instrumentality of the Government, and because its trustees are not officers of the United States, it would not be appropriate for the Senate to advise and consent to the appointment of trustees or officers. However, the names of prospective trustees and officers will be forwarded to the Foreign Relations Committee. If the Committee expresses reservations about a prospective trustee or officer, we will undertake to discuss and resolve the matter fully with the Committee before proceeding.

This arrangement will enable the Institute to retain its character as a private corporation and enable the Senate to participate in the selection of trustees in an appropriate manner.

Sincerely,

CYRUS VANCE.

TITLE V

Section 501.

This section was adopted by the Committee as a substitute for section 304 in the Administration's draft bill. That section would have provided that the Congress "approved" and "confirmed" certain actions taken by the President following recognition of the People's Republic of China on January 1, 1979; it would, in effect, have placed the Congress on record as agreeing that the President's directive of December 30, 1978, was within the scope of his constitutional authority. That directive was as follows:

Memorandum of December 30, 1978

Relations With the People on Taiwan

Memorandum for All Departments and Agencies

THE WHITE HOUSE,
Washington, December 30, 1978.

As President of the United States, I have constitutional responsibility for the conduct of the foreign relations of the nation. The United States has announced that on January 1, 1979, it is recognizing the government of the People's Republic of China as the sole legal government of China and is terminating diplomatic relations with the Republic of China. The United States has also stated that, in the future, the American people will maintain commercial, cultural and other relations with the people of Taiwan without official government representation and without diplomatic relations. I am issuing this memorandum to facilitate maintaining those relations pending the enactment of legislation on the subject.

I therefore declare and direct that:

(A) Departments and agencies currently having authority to conduct or carry out programs, transactions, or other relations with or relating to Taiwan are directed to conduct and carry out those programs, transactions, and relations beginning January 1, 1979, in accordance with such authority and, as appropriate, through the instrumentality referred to in paragraph D below.

(B) Existing international agreements and arrangements in force between the United States and Taiwan shall continue in force and shall be performed and enforced by departments and agencies beginning January 1, 1979, in accordance with their terms and, as appropriate, through that instrumentality.

(C) In order to effectuate all of the provisions of this memorandum, whenever any law, regulation, or order of the United States refers to a foreign country, nation, state, government, or similar entity, departments and agencies shall construe those terms and apply those laws, regulations, or orders to include Taiwan.

(D) In conducting and carrying out programs, transactions, and other relations with the people on Taiwan, interests of the people of the United States will be represented as appropriate by an unofficial instrumentality in corporate form, to be identified shortly.

(E) The above directives shall apply to and be carried out by all departments and agencies, except as I may otherwise determine.

I shall submit to the Congress a request for legislation relative to nongovernmental relationships between the American people and the people on Taiwan.

This memorandum shall be published in the Federal Register.

JIMMY CARTER.

[FR Doc. 79-479 Filed 1-2-79; 4:26 pm]

The Committee doubts that the power to issue this directive is within the authority conferred upon the President by the Constitution. While it is true that the President has some "constitutional responsibility for the conduct of the foreign relations of the nation," it is not true that he possesses all powers granted by the Constitution to do so; his exclusive authority to recognize and to negotiate with foreign governments has never been construed as having in any way narrowed or diminished the many powers of the Congress over foreign affairs matters, including the power to regulate commerce with foreign nations (art. I, sec. 8, cl. 3), to spend for the general welfare (art. I, sec. 8, cl. 1), and to control Federal expenditures (art. 1, sec. 9, cl. 7). It is these powers upon which many of the provisions of this bill are based, and it is the Committee's judgment that the enactment of these provisions is legally required—not simply politically desirable, but legally required—if the President is to be enabled to continue to conduct the myriad programs concerning Taiwan. The reason is that the statutes authorizing such programs invariably authorize the President to carry out those programs only with respect to foreign countries, nations, or states, and the President, on December 19, stated that, as of January 1, 1979, "Taiwan will no longer be a nation in the view of our own country."

The Committee has drafted this bill on the premise that the issue of Taiwan's international legal status need not be addressed herein, inasmuch as Taiwan can be treated as a country for domestic juridical purposes whatever its international legal identify. However, the Committee does not believe that the Congress, in enacting the various program authorities applicable to foreign nations, intended that the President be empowered to carry out those programs with respect to an entity that he does not view as a nation. The question is, in sum, one of Congressional constitutional prerogatives: can the President unilaterally redefine statutory terms and decree a statute to be applicable where he by his own statements has rendered it inapplicable? The Committee does not believe so.

Accordingly, the Committee has, on the motion of Senator Javits, stricken section 304 as proposed by the Administration and, in lieu thereof, made retroactive the effective date of the bill to January 1, 1979. While the juridical effect will be identical—the legality of U.S. relations with Taiwan during the statutory hiatus cannot be questioned—a retroactive effective date will make clear that the Congress does not concur in the President's claim of power and that his action does not serve as a precedent for arrogating to himself the authority to conduct programs which can be authorized only by statute.

Section 502.

This section, a standard "separability clause", was offered by Senator Javits. It is self-explanatory.

F. Cost Estimate

Section 252(a)(1) of the Legislative Reorganization Act of 1970 requires that Committees' reports on bills and joint resolutions contain an estimate of the costs of carrying out such legislation in the current year and in each of the five years that follow. This estimate is set forth in part 5 of the report of the Congressional Budget Office, set forth below:

Congressional Budget Office,
U.S. Congress,
Washington, D.C., February 27, 1979.

Hon. Frank Church,
Chairman, Committee on Foreign Relations, U.S. Senate, Room 4229, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 245, a bill to promote the foreign policy of the United States by authorizing the maintenance of commercial, cultural, and other relations with the people on Taiwan on an unofficial basis, and for other purposes.

Should the Committee so desire, we would be pleased to provide further detail on the attached cost estimate.

Sincerely,

Robert A. Levine,
(For Alice M. Rivlin, Director).

Congressional Budget Office Cost Estimate

February 27, 1979.

1. Bill number: S. 245.

2. Bill title: A bill to promote the foreign policy of the United States by authorizing the maintenance of commercial, cultural, and other relations with the people on Taiwan on an unofficial basis, and for other purposes.

3. Bill status: As ordered reported by the Senate Foreign Relations Committee on February 23, 1979.

4. Bill purpose: This legislation outlines the policy of the United States vis-a-vis Taiwan and authorizes the United States to maintain commercial, cultural and other relations with the people on Taiwan on an unofficial basis. It further describes the manner by which activities of the U.S. Government shall be carried out by or through the American Institute on Taiwan. Specifically, the bill:

Authorizes any department or agency of the U.S. Government:

1. To sell, loan, or lease properties and to provide administrative and technical support functions and services to the Institute;
2. To acquire and accept services from the Institute;
3. To transfer alien personnel employed in Taiwan and their accrued allowances, benefits and rights to the Institute;
4. To separate from government service for a specified period any employee who accepts employment with the Institute;

Authorizes the President:

1. To extend privileges and immunities comparable to those provided to missions of foreign countries to the instrumentality established by the people on Taiwan;
2. To prescribe such rules and regulations as he may deem appropriate to carry out the purposes of this Act;

Authorizes to be appropriated to the Secretary of State for fiscal year 1980 such funds as may be necessary to carry out the purposes of this act; and,

Authorizes the Secretary of State to use funds made available to carry out this act to further the maintenance of commercial, cultural, and other relations with the people on Taiwan on an unofficial basis.

5. Cost estimate:

[By fiscal year, in thousands of dollars]

Budget function 150:	
Authorization:	
1980	$5, 065
1981	0
1982	0
1983	0
1984	0
Estimated outlays:	
1980	3, 913
1981	649
1982	309
1983	52
1984	32

6. Basis for estimate: For fiscal year 1979, this estimate assumes that the cost of the American Institute of Taiwan will be met by the reprograming of amounts which were previously appropriated to cover operating expenses of the U.S. Embassy in Taiwan for fiscal year 1979. Assuming that the Institute begins operations on March 1, 1979, the amount of funds requiring reprograming from the State Department and other agencies is approximately $3 million. The enactment of this bill will have no net budget impact in fiscal year 1979.

The fiscal year 1980 estimate is the authorization level requested in the President's budget for each U.S. government department and/or agency which currently plans to operate through the American Institute of Taiwan in fiscal year 1980. Since submission of the budget request, some agencies have decided to transfer their activities out of Taiwan. No estimate was included in the authorization level for these agencies.

When these activities were funded on a reimbursable basis through the U.S. Embassy in Taiwan, they were authorized in separate Acts and fell under separate budget functions. This bill authorizes aggregate Institute activities.

Because the sections dealing with employee benefits simply restate existing law and provide no new benefits, there is no net budget cost associated with the employee sections. The estimate assumes full appropriation of the authorization estimate. Because the size and nature of the Institute have not yet been fully determined, this estimate is subject to considerable uncertainty.

Costs in 1980 were estimated by applying historical outlay rates to the amounts assumed to be appropriated.

7. Estimate comparison: None.

8. Previous CBO Estimate: None.

9. Estimate prepared by: Rita J. Seymour (225–4844).

10. Estimate approved by:

C. G. Nuckols,
(For James L. Blum,
Assistant Director for Budget Analysis).

G. Evaluation of Regulatory Impact

In accordance with Rule XXIX of the Standing Rules of the Senate, the Committee has evaluated the regulatory impact of the bill. Because the bill preserves the substance of commercial, cultural and other relations with the people on Taiwan through continued application of laws relating to foreign countries, no substantive regulatory activity should result from the bill's enactment. Procedural rules concerning the relationships between Government agencies and the American Institute in Taiwan are foreseen.

However, since this bill affects the entire range of unofficial programs, transactions and relations with the people on Taiwan, and because implementing procedures for each of the myriad affected activities have not yet been devised, it is impracticable to estimate the numbers and identify the categories of individuals that would be affected. Nor can the economic impact or amount of additional paperwork be determined. It is clear that the situation that would exist if the bill were not enacted would have a substantial adverse economic impact that the bill will avoid. The bill will not create any impact on the privacy of individuals.

H. Changes in Existing Law

In compliance with paragraph 4 of Rule XXIX of the Standing Rules of the Senate, the Committee reports that no changes in existing law are made by this bill.

I. ADDITIONAL VIEWS OF SENATOR CLAIBORNE PELL

The language of the last sentence of section 107 of this bill is the result of a compromise reached by the Committee on the original text which I introduced during the Committee markup. My original proposal read as follows:

> In carrying out its activities, the Institute shall take all appropriate steps to strengthen and expand the ties between the people of the United States and those individuals and entities on Taiwan that are representative of the majority of the people on Taiwan.

In proposing this amendment, it was my intention to underscore the need for the United States to show its concern for the rights of the native Taiwanese who constitute 85 percent of Taiwan's population, but who share in little of the island's political power. The roots of the Taiwanese majority go back some 300 years, and the native Taiwanese always have considered themselves to be separate from mainland China. The regime of the mainlanders who arrived only after World War II has been characterized by severe repression of the human rights of native Taiwanese, although there has been some improvement in recent years. Tensions between the native Taiwanese and the Nationalist government have, not surprisingly, been high as the Taiwanese sought to have a greater say in their own government.

In my view, the United States should have been faithful to its adherence to the principle of self-determination by pushing for an independent Taiwan after World War II. That did not happen; but I believe the Senate should, in this bill, give some recognition to the plight of the Taiwanese majority and the need for the new Institute to concern itself with the human rights of this majority. The recent events in Iran have, I hope, made it clear that the United States ought not be seen as the underwriter of a particular regime.

In promoting human rights on Taiwan, it is my expectation that the new Institute will apply all of the elements, including the one relating to political rights, that Secretary of State Vance set forth in his Athens, Georgia, speech of April 30, 1977.

ADDITIONAL VIEWS OF SENATOR JESSE HELMS OF NORTH CAROLINA

The concept of the American Institute in Taiwan contains at its heart a fatal flaw which cannot be eradicated. That flaw is, in turn, a reflection of the calculated ambivalence of the New China Policy—an ambivalence which can be explained only by fundamental intellectual dishonesty.

The Institute is an attempt to yoke together two logically contradictory propositions under a semantic gloss in order to avoid the inherent consequences of our actions. The New China Policy seeks to deny the juridical existence of the sovereignty exercised by the government of the Republic of China, while at the same time reaping benefits which can be conferred only by recognizing that sovereignty. Moreover, in a move which is even more reprehensible, it pretends to preserve those benefits at the same time that it contemplates the eventual extinction of the liberty and independence which is the moral basis of human dignity. The denial of sovereignty is the denial of the inherent right of self-defense, and is itself a form of immoral coercion.

Seduced by the glittering phantasm of personal triumph, the architects of the New China Policy rashly promised the rulers of Peking that our support of the sovereignty of the Republic of China would be withdrawn. Having done so, the same architects want to evade, before the American people, the moral responsibility of handing over 18 million people to "peaceful reunification" with the mainland. It is as though Herod tried to pretend to himself that the head he was offering to the insatiable Salome was made of paper.

Unfortunately, the real head of Taiwan is already on the platter. The Institute is a device to distract the people on Taiwan from that soreness around the neck, and to convince them that everything is just the same. The Committee struggled manfully to resolve the logical inconsistencies of the Administration bill with the brutal reality of the deed. Although many changes were made on a practical level to warp the structure of the Institute back to the demands of the real world, the fatal flaw remains.

The Fatal Flaw

That fatal flaw goes back to the announcement of President Carter on December 15, 1978, when he said:

> The Government of the United States of America acknowledges the Chinese position that there is but one China and Taiwan is part of China.

The key word in that sentence is "acknowledges." The use of the word "acknowledges" has been described by Administration spokesmen as stopping short of "accepts." In other words, the United States takes note that the government of the People's Republic of China claims to have sovereignty over Tawian, but the United States takes no position on whether or not the United States agrees with the

claim of the PRC. The implication is that the United States draws back, on the brink, of recognizing the PRC claim to sovereignty over Taiwan and the territories actually administered by the government of the Republic of China. The further implication, essential to the concept of the Institute, is that the government of the Republic of China retains some residuum of sovereignty, a *de facto* exercise of sovereignty, if not *de jure*.

But is that residuum of sovereignty enough to support the operation of the Institute?

By failing to take a position on the crucial issue, the logic of the New China Policy collapses.

If the position of Peking is correct, that is to say, the position that the United States "acknowledges," then Taiwan is juridically part of China and the exercise of sovereignty by the ROC is a rebellion against the legitimate authority of the PRC. If the position of Peking is correct, then the fact of that rebellion is a domestic matter, an internal affair which Peking may resolve as it sees fit. Under international law, Peking would have the perfect right to extinguish the rebellion either by negotiation, or, should negotiations fail, by economic or military pressures.

Moreover, if the position of Peking is correct, then the United States has no right under international law to interfere in an internal affair of the PRC. Under international law, the United States cannot have a "people to people" relationship that is not conducted under the authority of the central government of the PRC. We would have no right to object to any economic or diplomatic pressures applied by the PRC to induce "reunification." And most emphatically, we would not have the right to supply weapons, or go to war, as President Carter claims, to support the purported rebellion against the *de jure* sovereign authority in Peking.

That this is Peking's view is borne out by the press conference of the PRC Prime Minister, Hua Kuo-feng, in Peking on December 16. When asked whether the United States would be permitted to continue providing Taiwan with access to military equipment for defensive purposes, he said:

> During the negotiations the U.S. side mentioned that after normalization it would continue to sell limited amounts of arms to Taiwan for defensive purposes. We made it clear that we resolutely would not agree to this. In all discussions the Chinese side repeatedly made clear its position on this question. We held that after the normalization continued sales of arms to Taiwan by the United States would not conform to the principles of normalization, would be detrimental to the peaceful solution of the Taiwan issue and would exercise an unfavorable influence on the peace and stability in the Asia and Pacific regions. So our two sides had differences on this point.

This attitude was further confirmed by Ambassador Leonard Woodcock, as quoted in an article in the Washington Post by Jay Mathews, datelined Peking, January 1, 1979. The article said:

> Woodcock said he is certain, however, that the Chinese will continue to oppose such arms sales for the record. The first time Washington agrees to a major sales of arms after the

mutual security treaty with Taiwan expires in a year, Woodcock said, he expects the Chinese to make an official protest.

It is therefore highly significant that the Administration later revealed that it had also promised Peking that the United States would sell no defensive armament to Taiwan during 1979. In other words, no arms would be sold during the final year remaining of the Mutual Defense Treaty, a period during which treaty obligations required the United States to defend Taiwan. Left indeterminant was the question of whether we would sell arms after the end of the abrogation period of the treaty. In short, the United States promised that we would supply no arms during the period when we were juridically obliged to supply arms; the only period that the United States left open for the supply of arms to Taiwan was the period which, in the Peking view, it would be illegal for the United States to supply arms under international law.

Clearly, then, the success of "normalization" depends upon both the PRC and the United States exercising restraint in fulfilling the logic of their positions. If the United States insists on preserving the independence and sovereignty of the ROC government (that is to say, the people on Taiwan) through the supply of arms, then the PRC must decline to insist upon the logic of its view of sovereignty. If the PRC insists on the its view of the rights of sovereignty, then the United States must refrain from fulfilling its promises to the people on Taiwan. If the United States "acknowledges" the position of the PRC, then sooner or later one side or the other must concede.

Does the United States Accept?

But suppose by the term "acknowledges" the United States merely notes, but does not "accept" the PRC view that the PRC has *de jure* sovereignty over Taiwan and the territories controlled by the government of the ROC? In that case, then, the logic of the United States position would permit the development of another sort of relationship with the governing authorities on Taiwan. If the United States does not accept the PRC claim to sovereignty over Taiwan, then it is appropriate for the United States to continue a relationship with the people on Taiwan, and with the governing authorities there. It would be appropriate to continue our agreements, including cultural, economic, and military relationships.

Moreover, if the United States does not accept the PRC claim to sovereignty over Taiwan, then our attitude towards the PRC should be entirely different. If the government of the Republic of China retains even a residual *de facto* sovereignty over the territory it now governs, then the PRC's refusal to foreswear the use of force as the ultimate pressure to induce unification takes on another light entirely. In that case, the ROC is indeed a "state," and the PRC's use of force or the threat of force is a violation of international law and the United Nations Charter. Despite the PRC's refusal to rule out the threat of force, the ROC remains an independent state, with all the privileges and immunities of an independent state. If the United States does not "accept" the PRC view, then it is incumbent upon us to state categorically that we do not.

Indeed, the Institute bill, as it emerges from Committee, makes a straightforward case that the United States, or at least the Committee on Foreign Relations of the United States Senate does not accept the PRC view. It should be noted that:

(1) In section 101(b), the term "people on Taiwan" is defined as including the governing authority on Taiwan recognized by the United States prior to January 1, 1979, as the Republic of China;

(2) In section 102(a), the rights and obligations under the laws of the United States of natural persons on Taiwan and the Pescadores shall not be affected by the absence of diplomatic relations;

(3) In section 103, in the case of any action brought in any court of the United States on behalf of or against the people on Taiwan prior to the date of enactment of the act, the authorities on Taiwan shall continue to represent the people on Taiwan;

(4) In section 104, for all purposes, including actions in all courts in the United States, Congress approves the continuation in force or all international treaties and other agreements entered into between the United States and the Government recognized as the Republic of China prior to January 1, 1979;

(5) In section 106, programs and other relations conducted by the President or the U.S. Government with respect to the people on Taiwan shall be conducted by the Institute;

(6) In section 108, whenever the President or the Government is authorized or required by or pursuant to the United States law to enter into any agreement or arrangement relative to the people of Taiwan, such arrangements shall be conducted through the Institute.

(7) In section 110, whenever the application of a rule of law of the United States depends upon the law applied on Taiwan, the law on Taiwan shall be considered the applicable law for that purpose;

(8) In section 111, for all purposes, recognition of the PRC shall not affect the ownership of tangible and intangible properties owned by the people on Taiwan on January 1, 1979;

(9) In section 112, OPIC guarantees are continued with regard to U.S. private investments in Taiwan;

(10) In section 113, the President is authorized to extend diplomatic immunity to the instrumentality established in the United States by the people on Taiwan.

(11) In section 114, Congress states that it is the policy of the United States that the PRC will refrain from the use of force in the resolution of the Taiwan issue, and that the United States will provide the people on Taiwan with arms of a defensive character.

All of these provisions demonstrate clearly that the United States intends to consider the governing authorities on Taiwan to be seized of the exercise of sovereign authority over the territories controlled on January 1, 1979, and that the American Institute on Taiwan is tanatamount to an official diplomatic mission of the United States.

This position is reinforced by the explicit provisions of section 114 regarding defense. The ultimate attribute of sovereignty is self-defense. Indeed, the test of sovereignty is whether a nation possesses the capability, either alone or in conjunction with allies, of defending itself against aggression from another power. The claim of the United States to provide the people on Taiwan (that is to say, according to

section 101(b), a category that includes the ROC government) with weapons of a defensive character, even in the absence of a Mutual Defense Treaty after 1980, is tantamount to a declaration by Congress that the ROC governing authorities legitimately exercise sovereign authority and power. Indeed, the implicit acknowledgment by the President of the United States that the Mutual Defense Treaty will continue until December 31, 1979, despite the recognition of the PRC as "sole government of China" on January 1, 1979, is legally tantamount to recognition of ROC sovereignty.

This view is buttressed by the provisions of Title II, which establishes the Institute as a surrogate diplomatic mission under United States law, and gives the employees of the Institute rights which are derived from their former status as employees of the U.S. Government, including the diplomatic service. Indeed, although section 205(2)(e) states that "the Institute shall not be an agency or instrumentality of the United States," that section must be read in conjunction with the whole Title, which takes pains to establish the Institute as a beneficiary of the President's directives (sections 201 and 202), as an entity which has par with other departments and agencies of the U.S. Government as regards personnel benefits (section 203), as an entity whose personnel may return to other Government agencies as if it were an agency of the United States and continue to participate in contributions towards U.S. Government compensation and pension systems, and accrue time in U.S. Government programs for their terms of service. In short, for all practical purposes, the Institute is treated as a U.S. Government agency, despite the attempt to establish its status otherwise.

Even from a financial point of view, Title III establishes clearly that the funding of the Institute comes from U.S. Government appropriations, and the Secretary of State is authorized to use such funds to carry on through the Institute the same functions he would carry on through a diplomatic mission. Indeed, the Institute's expenditure of such funds is made contingent upon an audit by the Comptroller General of the United States. The fact that the Institute is a creature of Congress is emphasized by section 401(c) which provides that any agreements made by or through the American Institute in Taiwan shall be subject to the same approval as though the agreements were made directly by a department or agency of the United States.

No one can deny, therefore, that, despite disclaimers, the Institute is a veritable agency of the United States Government, providing a direct relationship with the people on Taiwan, including, of course, the governing authorities which the United States recognized as the government of the Republic of China until January 1, 1979. All that is lacking is official recognition of that status.

Does the Institute Suffice?

The Institute gives much of the substance of diplomatic relationship without the official recognition of such a status. But is that enough? Will that suffice for our relationship with the ROC government in the long run?

The New China Policy places the United States in the moral position of an ambitious man who divorces his first wife to marry a socially prominent and attractive second wife, all the while promising wife

No. 1 that they will continue to live together as though nothing had happened. Such an anomaly cannot lead to stability or fulfillment; in fact, it is bound to become a destabilizing element if the expectations of the new partner are not fulfilled.

The whole question of the future security of Taiwan is cast into a deep shade by the failure of the Administration to secure commitments and practical arrangements that would guarantee Taiwan's freedom of action. More deeply disturbing is not simply the failure to obtain such guarantees; the most damaging blow is the admission that Taiwan's future was conceded in advance to the will of Peking. The testimony of Ambassador Woodcock before this Committee was startling in its revelation of the abject capitulation of the United States before the rulers of Peking:

> It had been the American position that we were seeking a guarantee of the nonuse of force in the settlement of the Taiwan question. I personally came to the conclusion—and I am now speaking in personal terms—that to insist upon that would be to run into a roadblock because it was, in essence, the negotiation of sovereignty. It isn't a question of who we look upon in the situation. The Chinese in Peking and the Chinese in Taipei both insisted that there was one China. It was a question of trying to negotiate directly a guarantee of the nonuse of force by a sovereign government against what in the mind of that government is its own province.
>
> So central to our negotiations beginning in the period of July, 1978, was our insistance and our expectancy that it would be settled on a peaceful basis, but recognizing the roadblock of the sovereignty issue, which would have led the negotiations nowhere.
>
> I think in a very practical sense, I myself am convinced that we have the best possible assurance in that regard, and I think the statements particularly of Vice Premier Teng Hsiao-P'ing, beginning in late November of 1978, reiterated forcefully to the Nunn senatorial delegation, of which Senator Glenn was a member, in early January 1979, that we are getting the most positive response from the Chinese government in this regard.
>
> The CHAIRMAN. At any time during the negotiations over the period that you were in Peking, was the matter of an express commitment by Peking against the use of force in settling the Taiwan question posed?
>
> Ambassador WOODCOCK. Not by me, sir. No.

Keeping in mind that the Ambassador was the sole channel for the negotiations which led to "normalization," we must conclude the following:

1. Peking considers that it has sovereign authority over Taiwan.
2. The use of force is the ultimate determinate of sovereignty.
3. Peking's ultimate sovereignty over Taiwan was a nonnegotiable item for Peking.
4. The United States view of Peking's sovereignty over Taiwan is irrelevant to Peking's intention to assert that sovereignty.

5. The United States, in refusing even to attempt to negotiate the question, conceded the ultimate disposition of Taiwan to Peking's authority.

6. The United States encourages the incorporation of Taiwan into the People's Republic of China by peaceful means.

7. The United States would be displeased if force were used to bring about unification, but we expect that "unification" by some means would be the "settlement" of the Taiwan question.

A "Decent Interval" for Taiwan

These conclusions, which flow indisputably from Ambassador Woodcock's testimony, can leave no particle of doubt that the New China Policy has already surrendered the legal and moral status of Taiwan to the Communist rulers of Peking. All that is retained is a pragmatic, under-the-table relationship, designed to provide a temporary umbrella, a "decent interval," as it were, to shield the people on Taiwan from an immediate blow, to give time to phase our American capital investment there if necessary, and to bamboozle the American people.

The impact of the New China Policy is that both Peking and the United States agree that Taiwan has only one option: To come under Communist hegemony, to use the word that Peking always applies to the Soviet Union. The only question remaining for Taiwan is a question of timing. We are saying that Taiwan has no right to refuse indefinitely. And to help Taiwan to negotiate quickly, both the PRC and the United States hold the ultimate levers: the PRC retaining the right to use force, and the United States retaining the right to supply defensive weapons. Our right to supply weapons conceivably could be continued at such a level as to force the PRC into a better deal for Taiwan and for American investment there; but it could also be withheld if Taiwan were recalcitrant and refused to be absorbed into the Communist system. The execution of the New China Policy so far ought to be a warning to the people on Taiwan that the present leadership of the United States is willing to subordinate the human rights and dignity of the people on Taiwan to other considerations.

It is for this reason that I have found a widespread concern among my colleagues over the exact nature of the security guarantees to Taiwan. The question turns upon whether the policy of the United States is to support the indefinite automony of the people on Taiwan, or whether our security assistance is to support the interests of the New China Policy. The information, at first suppressed, that no new weapons would be supplied under the Mutual Defense Treaty during the last year of its existence is further evidence that the architects of the New China Policy are seeking to avoid any real test of our true intentions.

The notion that Taiwan's social, economic, and political autonomy could be preserved within the sovereignty of the PRC will hardly bear the least examination. The notorious example of Tibet, which concluded a written agreement with Peking guaranteeing its religious, social, and political systems, demonstrates the extent to which Peking will perpetrate cultural genocide. The example of Hong Kong, ostensibly under British rule, but in reality dominated by PRC finance, trade, kickbacks and corruption, survives because it fulfills a special need to which Taiwan would be superfluous. Rather Taiwan could

expect to become the victim of economic and political subversion—pressed from without by restrictions and boycotts, and assaulted from within by seducing business leaders with special deals and economic dependencies. Once political control were established, key leaders and cultural figures would disappear for "reeducation."

Nor should our enthusiasm for China's "four modernizations"—one of which is the modernization of the Chinese military capability—blind us to the fact that no amount of capital expenditure or political pragmatism will bring about modernization without the element which has been found essential wherever substantial economic progress has been made in the world. The essential element is personal freedom.

China is a totalitarian country whose extreme poverty is matched by its poverty of freedom. An authoritarian country can progress if it allows a large measure of economic freedom to its citizens; but a totalitarian country, by definition, is one in which every decision for every citizen is dictated by political considerations. Upwards of 65 million Chinese died to establish that political dictatorship; even today reliable estimates say that between 7 million and 25 million Chinese are in forced labor camps at the present time.

Such a system is inherently unstable. The purges and counter-purges in the leadership circles have been matched by a continuing history of uprisings and local rebellions. The instability of the present system is evident in the fact that Teng Hsiao-p'ing, the controlling personality, is not No. 1 in either the hierarchy of the Communist Party or of the state. He himself was purged twice, and rehabilitated three times. His present consolidation of power extends back no more than 18 months. Moreover, his power rests solely upon the strength of the military commanders who sheltered him when he was purged by Mao. The impotence and disarray of the central government is evident when one considers the fact that Mao could not arrest Teng so long as Teng was in the protection of the provincial military commanders.

Nor is there any established mechanism for the transfer of power from a leader who is now 74. Nor is there a legal framework for the protection of human rights. A study by the Library of Congress shows that Chinese laws are not codified, and that the directives of the Party or of local personalities are superior to the rule of law. Taiwan could not expect that any written guarantees of the freedom of the people on Taiwan would be carried out.

Two Governments in One China

The New China Policy is predicated upon the expectation that Taiwan will eventually come under the domination of the Communist government in Peking. The Institute provides a restraining mechanism for slowing down that process; if strengthened, it could help thwart that process completely.

Hopefully, the Institute can provide a bridge to a more realistic China policy. The reality is that China has two governments which each effectively control different parts of Chinese territory. A realistic policy would recognize each government as competent in the territory it controls. There is no need to recognize the claim which each makes to the territory controlled by the other, nor is there any need to deny such claims. Above all, the United States should refrain from actions which would tend to coerce "unification."

The New China Policy is despicable not because it tries to deal with Mainland China, but because its aim is to consign the people on Taiwan to a fate which they would not freely choose. It attempts to retain the substance of sovereignty for Taiwan while conceding the juridical basis for sovereignty to the Communist rulers of Peking. Insofar as the Institute retains the substance of a relationship with a sovereign power, the Institute should be encouraged and strengthened. For the decision of the President of the United States is not determinative *de jure* of the existence of a sovereign state. The Republic of China remains a sovereign state as long as it effectively controls its own territory. As long as a small nation retains the help of allies who will back up its sovereign powers with a defensive capability, it can retain its independence. The Institute, for the time being, can perform that function.

Congress must keep a close oversight on the Institute to ensure that it is used to preserve Taiwan's independent options, not to destroy them. Congress must avoid complicity in the New China Policy.

Had not the actions taken by the President in withdrawing diplomatic representation with the Republic of China been so precipitate, nor the legislation considered by this Committee in pursuance of the President's actions so unprecedented, there would be no need to submit these additional views.

However, the President has in fact engaged in actions of an unprecedented nature, and seeks Congressional ratification of his actions through legislation, S. 245.

It is worthwhile, therefore, to review the major background issues with regard to S. 245.

Three Major Issues

Three major issues were raised by the President's actions of December 15, 1978.

First, the President derecognized a long-time ally and friend, the Republic of China. This precipitate action not only was unnecessary, it came at the worst possible time. As the world looked to the United States for a demonstration of resolve and fidelity after a period of growing setbacks for American interests, the world saw instead vacillation, weakness and betrayal of friendship in the derecognition of the Republic of China.

It is not up to the Congress to change that action. The President may choose the nations he wishes to recognize, and which he does not. The issue of derecognition may well be a matter to be dealt with in the 1980 Presidential elections. That is a more proper forum for settlement of that issue.

The second issue raised by the President's actions of December 15, 1978, is the termination of a mutual defense treaty with an ally in time of peace.

Needless to say, this unprecedented action has not gone without notice by allies and opponents alike around the world. Despite Administration protestations to the contrary, many of our allies rightfully question the value of the United States' mutual security commitments. Newspaper reports that the Ambassador to the United States from one nation bordering the Indian Ocean littoral has sought to be moved

to Moscow because "that is where the power is" cannot be brushed aside as reportage of a mere diplomatic aberration. How much the Presidential decision to abandon the people on Taiwan affected the Ambassador's decision one only can speculate; but it is difficult to believe that it had no effect.

The Congress may not be the proper forum to deal with the specific issue of termination of the treaty, *per se;* although Congress certainly must deal with the broader issue of the defense of the people on Taiwan. Already, a court suit has been undertaken to deal with the particulars of the treaty termination matter. Its outcome will say much about the scope of the President's power to terminate a treaty with an ally, unilaterally and without prior consultation with and approval by the Congress. At a time when the American public is wary of overextension of Executive power, a proper resolution of the issues raised in the suit will do much to define the limits of Executive power.

The final issue raised by the President's actions of December 15, 1978, is the protection of the interests of the people of the United States in Taiwan, and the concurrent protection of the legitimate interests of our friends and allies, the people of the Republic of China on Taiwan.

This, Congress most properly can and must address. Congress begins that process with consideration of S. 245, proposed by the Administration to set up an unofficial relationship with the Republic of China, or—as it now is termed—"the people on Taiwan."

The legislation proposes to set up what amounts to a legal fiction: the United States will recognize the Republic of China as a legal, sovereign entity in all matters except those in which the Republic of China or the people of the Republic of China on Taiwan must deal with the United States on an official basis. This borders on being a charade, and is given the legitimacy of law by S. 245 in order to accommodate the President in his policy of derecognition of the Republic of China. That the Congress is willing to make such an accommodation, this political favor to the President, I cannot understand, especially in view of the questionable nature of basis underlying the legislation proposed by the Administration.

In spite of this legislation, there are many issues which need to be addressed by the Congress, so as not to jeopardize our valuable relations with the people on Taiwan. Foremost is the continuing interest of the people of the United States in the security and defense of the people on Taiwan. Nor should the value of Taiwan to legitimate U.S. and allied security interests in the Pacific be overlooked. Close scrutiny should be made of the People's Republic of China, not only in terms of what good can come of the new United States relations with that nation, but also what pitfalls exist for U.S. policymakers.

Protection of U.S. interests in Taiwan certainly will require much fine-tuning of the legislation now before the Congress. Such is to be expected, given the haste in which the whole matter has been considered.

The Process of "Normalization"

Congress came to deal with the so-called Taiwan issue and the legislative proposal now before us because of President Carter's "normalization" of U.S. relations with the People's Republic of China.

It was a hasty action. By early December, the President's much-publicized Camp David initiative was coming to naught. His December 17 deadline for a final peace agreement would come, and pass, with no agreement.

It was at this time, with imminent failure in the Middle East the headlines across America, that the rush began for "normalization."

Although under a Congressional mandate to consult with the Congress over any possible termination of the mutual defense treaty with the Republic of China, and under a personal mandate—a campaign pledge—to conduct foreign affairs in the open, the President and his men moved headlong towards full recognition of Peking, on Peking's terms.

Peking's terms became the only terms for recognition because of the need the President felt to accomplish "normalization" quickly. Thus, it was learned later, the President did not even attempt to seek a pledge from Peking not to use force to "liberate" Taiwan or seek reunification with the island-nation.

Congressional consultation flew out the window. Almost as an afterthought some Congressional leaders were invited to the White House a few bare hours before announcement of the President's decision of "normalization" to hear the President's decision. So much for consultation.

The Republic of China was not even accorded that much courtesy. According to U.S. Ambassador Unger's testimony before the Committee, the leadership of the government of the people on Taiwan was awakened at 2:00 a.m.—in the early hours of the morning—and told of the President's decision.

Thus, no attempt was made to ease the fact of recognition. No contingency plans were able to be made on Taiwan; hence, the popular outbursts of feeling on Taiwan, and resultant violence.

Lacking prior consultation, major issues that could have been addressed jointly by the Congress and President with the Peking government were left to be handled by Congress alone, with the Executive alternately pleading and threatening lest anything short of the *fait accompli* it presented to the Congress be adopted.

Nor was it possible for any Congressional consideration to be given, nor input, concerning the nature of the U.S. relationship with the Peking government. Events in Vietnam, with the possibility of Soviet intervention, cast a new light on the nature of the regime that the United States is dealing with in Peking, as did the anti-Soviet, belligerent rhetoric of Vice-Premier Teng during his visit.

The Beneficiary of "Normalization": The PRC

With whom are we dealing in the PRC?

Like a novice playing poker for the first time, we have placed all of our bets on Vice-Premier Teng. Right now, he appears to be holding all of the right cards. And so he did, several years ago, too, when President Ford held discussions with him. "The most powerful man in China," he was represented as being back then; 90 days later, he was out of power, purged.

There is a naive hope in the Administration that such will not happen again; that, somehow, U.S. policy will help Teng shore up his power base and line of succession. Other Administrations held

similar views of omnipotence. The Kennedy and Johnson years had their Vietnam and the Nixon and Ford Administrations had Iran.

But right now, Teng has power, it is believed. Whether Teng's successors will continue his policies—economic, modernization, toward Taiwan, etc.—is a matter of serious concern.

The China Teng rules has, perhaps, the worst human rights record in the history of modern times. One witness before the Committee recited figures—from 50 to 64 million persons killed during the struggle for power that brought to power the elite that now governs China—the magnitude of which boggle the mind. So many deaths are beyond comprehension. Spoken on so large a scale, the story overlooks the human suffering that accompanied those deaths.

If this were only a historical event, there are some who might be willing to excuse it all. But it is not just a fact of past history; the misery continues even today. One need not look just to organizations like Amnesty International for clearly documented charges of gross human rights violations by the current Peking regime; the President, himself, one witness informed the Committee, is reported to have had a detailed briefing on the sad state of human rights observance in the PRC more than a year ago. Yet, he proceeded with "normalization," as far as can be determined, without a whisper about China's human rights record.

China has a huge population, the largest nation on Earth, a billion people, give or take a few million. Unfortunately, China is economically backward, with serious questions about its potential for modernization before the end of the century. Nor are the signs good for bringing off an economic miracle such as the one accomplished on Taiwan over the past 30 years. China does not possess the infrastructure to bring about the miracle: it has no free economy or free labor, and very little incentive for the individual. Trade with the people on Taiwan is enormous: today, the Republic of China is our eighth largest trading partner, surpassing Saudi Arabia and other oil producers who so often are charged with causing such large trade deficits. Trade with Taiwan is two-way trade, and valuable to the United States; it is trade of one industrial power with another. Trade with the PRC, on the other hand, is very small by comparison; the PRC is a backwards nation industrially, offering no real potential for mutually beneficial trade for years to come.

The PRC remains territorially ambitious. One need witness only the recent incursion into Vietnam for an example. PRC imperialism extends to the radical regime in Cambodia, where the PRC finds an acceptable client-state relationship much to its liking. And who can forget Tibet, or the Indian border war of past years?

Strategically, the PRC is of questionable importance to the Untied States. If one is to give credence to the theory that the PRC "ties down" a large Soviet force in their common border, the PRC would do so with or without U.S. recognition, no matter the terms. Of greater concern to the United States should be the ability of the PRC to drag the United States into a potential conflict situation with the Soviet Union, or into a surrogate war.

The old Chinese strategem, playing the near barbarian (the U.S.S.R.) off against the far barbarian (the United States), continues to hold sway in the minds of Peking's strategists.

One need witness only the language of Vice-Premier Teng on his U.S. visit to see that strategem verbalized.

Thus, the question arises, what is the real U.S. interest in the PRC? Is it so great that the United States need accept Peking's terms for recognition?

More importantly, is the interest of the PRC in having a U.S. ally, economic and political, so great that the PRC can accommodate whatever status Taiwan wishes to have short of political control of the Mainland?

The PRC needs the United States far more than the United States needs the PRC, a fact completely overlooked by the Administration in its negotiations, so-called, with the PRC concerning the Taiwan issue.

Taiwan, an Ally and Longstanding Friend

As America's eighth largest trading partner, the Republic of China remains an important economic asset of the United States. One expert has told me that withdrawal of Taiwan's funds from the banks in New York would precipitate a severe economic situation, forcing some banks to face possible bankruptcy as a result. Thus, many would not want to antagonize Taiwan too harshly.

Strategically, Taiwan serves as an important intelligence resource for the United States off the coast of Mainland China. While some may contend that a larger U.S. presence in the PRC will facilitate intelligence gathering and obviate, somewhat, Taiwan's importance, many do not agree with that conclusion. One need only consider the restrictions on movement in the Soviet Union to see how the other major totalitarian state in the region deals with human intelligence gathering. The Taiwan post is important for the United States, and will remain so. Nor should anyone be deluded into believing that such intelligence gathering is unnecessary, now that the United States has opened up full relations with Peking.

We must not forget that Peking views any relationship with the United States as only a matter of necessity—again, playing off the far barbarian against the near one. Peking's relationship with the United States still remains an adversary one over the long haul, as even top China hands in the Carter Administration are quick to admit.

With rumored new missile capability under development, with a missile possibly able to reach the United States said to be part of the Chinese strategic nuclear delivery program, the United States has every need to be wary of Peking's long-term intentions. Thus, the need continues for a Taiwan base, not only for intelligence gathering, but as an advance-base for U.S. forces in any emergency, either on the Mainland, or in Japan or Korea.

Some may have forgotten that the Japanese attack on Pearl Harbor was launched from Taiwan, in part. Strategically, Taiwan sits in an important location, serving as a vital choke-point for shipping around the coast of China. This includes not only commercial shipping so vital to U.S. allies Japan and Korea; but also Soviet naval ships bound for action in the Southern Pacific or Indian Ocean.

Thus, the United States continues to have important economic and strategic interests in Taiwan.

Taiwan's Security Needs

The Committee has attempted to provide the people on Taiwan with some security assurances in Section 114 of S. 245, the legislation it has reported to deal with the Taiwan issue.

While the section gives some hope to the people on Taiwan, it is an insufficient guarantee of their security. What is needed is a forthright statement by the Congress that the proper security needs of the people on Taiwan will be met.

What are those needs? All are based on the supply of advanced U.S. defensive weaponry to the people on Taiwan. Basic to the needs of the people on Taiwan is an all weather fighter. Mentioned prominently are the F5–G and the F–16 or F–4, all of which have an all-weather capbility. With such a fighter, the people on Taiwan could protect their airspace from foreign incursions well into the 1980's.

Secondly, the people on Taiwan need sufficient anti-ship weaponry, including anti-submarine warfare (ASW) weapons. This is critical to the credibility of any deterrence of an amphibious assault on Taiwan, or an attempted blockade of shipping to the island. Mentioned prominently here are such weapons as the Sea-Sparrow and the Harpoon antiship missiles, as well as ASW helicopters.

Other types of defensive weaponry supplied in such amounts as to give the people on Taiwan a credible deterrent capability are necessary if Taiwan is to have the security it feels it needs. Without such security, there can be no basis from which to begin talks about "reunification"—which appears to be the goal of the Carter Administration in its dealings with the people on Taiwan. Nor can the United States be assured that Taiwan will not take some sort of desperate action lacking such supply and commitment from the United States.

Faced with U.S. acquiescence in the eventual "reunification" with the Mainland and concommitant withholding of needed U.S. defensive weaponry, Taiwan well could seek allies elsewhere, or go nuclear.

Is there anyone in Congress who wants to force Taiwan into the Soviet camp, or the nuclear club?

But both eventualities could take place.

A desperate nation often takes desperate measures. Taiwan in ths nuclear club would be subject to economic blackmail by other natione desiring nuclear weapons. Who can say that, perhaps, Saudi Arabia or Libya, might seek to trade oil so badly needed by the people on Taiwan for Taiwan's nuclear technology. Without a firm U.S. commitment to Taiwan's defense and security, with a steady supply of defensive weaponry as proof of that commitment, Taiwan well could fall prey to such economic blackmail. Similar blackmail could come from South Africa, perhaps, which supplies Taiwan with large amounts of uranium needed by Taiwan for its electricity-generating nuclear reactors. The potential is there, and dangerous it is.

Or, Taiwan might decide that the Soviet Union well could be a partner of convenience, much like Peking finds the United States at present.

These are unpleasant scenarios, but well within the realm of possibility for the people on Taiwan if they feel abandoned by their longtime ally, the United States.

President Carter has stated that the United States could go to war to protect the people on Taiwan. There is no need for such useless flag-waving, for committing American soldiers where such commitment is not necessary. And it should be unnecessary for the United States to commit one American soldier to the defense of Taiwan and its people, if the United States merely supplies the people on Taiwan with the weaponry they need to defend themselves.

Congress can commit that weaponry in the legislation now before it, or by other legislative means. Congress can, and should, make a commitment to the security of the people on Taiwan, a commitment of such strength and force as to leave no doubt in Taipei or Peking as to what the people of the United States feel about the security of the people on Taiwan.

The public supports such a commitment; a recent survey finds that a large majority of Americans feel that the United States should continue to supply the people on Taiwan with the defensive weaponry they need.

Thus, any commitment, both in words and action in supplying weaponry to the people on Taiwan not only is consistent with U.S. interests in Taiwan and the Pacific, but also meets with the approval of the public.

Certainly, it fulfills a moral obligation of the people of the United States to the people on Taiwan.

J. APPENDICES

APPENDIX 1

THE WHITE HOUSE.

To the Congress of the United States:

The United States of America has recognized the Government of the People's Republic of China as the sole legal government of China and is establishing diplomatic relations with that government. The Joint Communique issued by the United States and the People's Republic of China was the culmination of a long process begun by President Nixon and continued by President Ford and me.

I have also announced that, in the future, the American people will maintain commercial, cultural, and other relations with the people on Taiwan without official government representation and without diplomatic relations. In furtherance of that policy, and pending enactment of legislation on the subject, I have directed all departments and agencies to continue unofficially to conduct programs, transactions and other relations with Taiwan.

To authorize legally the permanent implementation of that policy, I am today transmitting to the Congress a bill "to promote the foreign policy of the United States through the maintenance of commercial, cultural and other relations with the people on Taiwan on an unofficial basis, and for other purposes."

This bill will confirm the continued eligibility of the people on Taiwan for participation in programs and activities that under United States law are to be carried out with foreign governments; provide for the carrying out of such programs and activities on an unofficial basis through the American Institute in Taiwan, a nonprofit corporation, and the corresponding instrumentality being established by the people on Taiwan; and establish funding, staffing and administrative relationships of the Institute. It also contains other authorizations and provisions relating to the foregoing matters.

I am confident the Congress shares my view that it is in the national interest that these unofficial relations between the American people and the people on Taiwan be maintained. It is highly desirable that this legislation be enacted as promptly as possible. I look forward to working with the Congress on this important project.

JIMMY CARTER.

THE WHITE HOUSE, *January 26, 1979.*

A BILL To promote the foreign policy of the United States through the maintenance of commercial, cultural and other relations with the people on Taiwan on an unofficial basis, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SECTION 101. No requirement for maintenance of diplomatic relations with the United States, or for recognition of a government by the United States, as a condition of eligibility for participation in programs, transactions or other relations authorized by or pursuant to United States law shall apply with respect to the people on Taiwan.

SEC. 102. Whenever any law, regulation or order of the United States refers or relates to a foreign country, nation, state, government or similar entity, such terms shall include, and such law, regulation or order shall apply with respect to, the people on Taiwan.

SEC. 103. Whenever authorized or required by or pursuant to United States law to conduct or carry out programs, transactions or other relations with respect to a foreign country, nation, state, government or similar entity, the President or any department or agency of the United States Government is authorized to conduct and carry out such programs, transactions and other relations with respect to the people on Taiwan, in accordance with applicable laws of the United States.

SEC. 104. Programs, transactions and other relations conducted or carried out by the President or any department or agency of the United States Government with respect to the people on Taiwan shall, as the President may direct, be conducted and carried out by or through the American Insitute in Taiwan, a nonprofit corporation incorporated under the laws of the District of Columbia (hereinafter "the Institute").

SEC. 105. Whenever the President or any department or agency of the United States Government is authorized or required, by or pursuant to United States law to enter into, perform, enforce, or have in force an agreement or arrangement relative to the people on Taiwan, such agreement or arrangement shall be entered into, or performed and enforced, as the President may direct, by or through the Insitute.

SEC. 106. Whenever the President or any department or agency of the United States Government is authorized or required by or pursuant to United States law to render or provide to, or to receive or accept from, the people on Taiwan any performance, communication, assurance, undertaking or other action, such action shall, as the President may direct, be rendered or provided to, or received or accepted from, an instrumentality established by the people on Taiwan.

SEC. 107. Whenever the application of a rule of law of the United States depends upon foreign law, or compliance with foreign law, the law applied by the people on Taiwan shall be considered foreign law for that purpose.

TITLE II

SEC. 201. Any department or agency of the United States Government is authorized to sell, loan or lease property, including interests therein, to, and to perform administrative and technical support functions and services for the operations of, the Institute upon such terms and conditions as the President may direct. Reimbursements to departments and agencies under this section shall be credited to the current applicable appropriation of the department or agency concerned.

SEC. 202. Any department or agency of the United States Government is authorized to acquire and accept services from the Institute upon such terms and conditions as the President may direct, without regard to the laws and regulations normally applicable to the acquisition of services by such department or agency.

SEC. 203. Any department or agency of the United States Government employing alien personnel in Taiwan is authorized to transfer such personnel, with accrued allowances, benefits and rights, to the Institute without a break in service for purposes of retirement and other benefits, including continued participation in any system established by law or regulation for the retirement of employees, under which such personnel were covered prior to the transfer to the Institute: *Provided*, That employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, are currently deposited in the system's fund or depository.

SEC. 204. (a) Under such terms and conditions as the President may direct, any department or agency of the United States Government is authorized to separate from Government service for a specified period any officer or employee of that department or agency who accepts employment with the Institute.

(b) An officer or employee separated under subsection (a) of this section shall be entitled upon termination of such employment with the Institute to reemployment or reinstatement with that department or agency or a successor agency in an appropriate position with attendant rights, privileges and benefits which the officer or employee would have had or acquired had he or she not been so separated, subject to such time period and other conditions as the President may prescribe.

(c) An officer or employee entitled to reemployment or reinstatement rights under subsection (b) of this section shall, while continuously employed by the Institute with no break in continuity of service, continue to participate in any benefit program in which such officer or employee was covered prior to employment by the Institute, including programs for compensation for job-related death, injury or illness; for health and life insurance; for annual, sick and other statutory leave; and for retirement under any system established by law or regulation: *Provided*, That employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, must be currently deposited in the program's or system's fund or depository. Death or retirement of any such officer or employee during approved service with the Institute and prior to reemployment or reinstatement shall be considered a death in service or retirement from the service for the purposes of any employee or survivor benefits acquired by reason of service with a department or agency of the United States Government.

(d) Any employee of a department or agency of the United States Government who entered into service with the Institute on approved leave of absence without pay prior to the enactment of this Act shall receive the benefits of this title for the period of such service.

SEC. 205. The Institute shall be treated as a tax exempt organization described in section 501(c)(3) of the Internal Revenue Code of 1954, and shall not be an agency or instrumentality of the United States. Employees of the Institute shall not be employees of the United

States and, in representing the Institute, shall be exempt from section 207 of title 18, United States Code. The salaries and allowances paid to employees of the Institute shall be treated in the same way for tax purposes, under sections 911, 912, and 913 of the Internal Revenue Code of 1954, as salaries and equivalent allowances paid by departments and agencies of the United States Government.

TITLE III

SEC. 301. In addition to funds otherwise available for the purposes of this Act, there are authorized to be appropriated to the Secretary of State from time to time such funds as may be necessary to carry out such purposes. Such funds are authorized to remain available until expended.

SEC. 302. The Secretary of State is authorized to use funds made available to carry out this Act to further the maintenance of commercial, cultural and other relations with the people on Taiwan on an unofficial basis. The Secretary may provide such funds to the Institute for expenses directly related to the purposes of this Act, including—

(1) Payment of salaries and benefits to Institute employees;

(2) Acquisition and maintenance of buildings and facilities necessary to the conduct of Institute business;

(3) Maintenance of adequate security for Institute employees and facilities; and

(4) Such other expenses as may be necessary for the effective functioning of the Institute.

SEC. 303. Any department or agency of the United States Government making funds available to the Institute in accordance with this Act shall make arrangements with the Institute for the Comptroller General of the United States to have access to the books and records of the Institute and the opportunity to audit the operations of the Institute.

SEC. 304. The programs, transactions and other relations carried out by the President or any department or agency of the United States Government with respect to the people on Taiwan since January 1, 1979, are approved and confirmed.

SEC. 305. The President is authorized to prescribe such rules and regulations as he may deem appropriate to carry out the purposes of this Act.

SECTION-BY-SECTION ANALYSIS OF THE PROPOSED ACT TO PROMOTE THE FOREIGN POLICY OF THE UNITED STATES THROUGH THE MAINTENANCE OF COMMERCIAL, CULTURAL AND OTHER RELATIONS WITH THE PEOPLE ON TAIWAN ON AN UNOFFICIAL BASIS, AND FOR OTHER PURPOSES

I. INTRODUCTION

The legislation (hereinafter "the bill") is being proposed as the result of the recognition by the United States of the People's Republic of China as the sole legal government of China and the establishment of diplomatic relations between the United States and the People's Republic of China. Its purpose is to facilitate continuation of commercial, cultural and other relations between the American people and the people on Taiwan on an unofficial basis.

The bill clarifies the application of laws of the United States to the people on Taiwan in light of the changed diplomatic situation, and provides for the continued conduct of programs and transactions with the people on Taiwan. It also contains a number of provisions on administrative, financial and related subjects which will facilitate this new nongovernmental relationship with the people on Taiwan.

The term "people on Taiwan," as used in the bill, reflects the nonexistence of a government-to-government relationship, and encompasses both the authorities and the inhabitants on the islands of Taiwan and the Pescadores.

II. PROVISIONS OF THE BILL

Section 101

This section provides that legal requirements for the maintenance of diplomatic relations with the United States or recognition of a foreign government by the United States will not be a bar to eligibility of the people on Taiwan for participation in programs, transactions or other relations under U.S. law. This will avoid questions under provisions of law such as section 620(t) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(t)), which refers explicitly to severance of diplomatic relations. It is also intended to satisfy requirements for diplomatic relations with or recognition by the United States which might be implied by terms such as "friendly country" contained in various statutes.

Section 102

This section specifies that laws, regulations and orders which refer or relate to "foreign countries," or use similar terms, shall continue to include and apply to the people on Taiwan. The President has directed the heads of all departments and agencies to construe such laws as continuing to apply to the people on Taiwan. This directive has facilitated maintenance of unofficial relations pending action by the Congress. This section is intended to confirm continued eligibility of the people of Taiwan under such important legislation as the Arms Export Control Act, Atomic Energy Act of 1954, the Export-Import Bank Act, the Foreign Assistance Act of 1961, the Mutual Educational and Cultural Exchange Act of 1961 and the Trade Act of 1974.

Section 103

This section expressly confirms the authority of the President and departments and agencies to carry out programs, transactions and other relations with the people on Taiwan under laws which provide for such programs, transactions and relations with respect to foreign countries.

Section 104

This section provides that programs, transactions and relations with respect to the people on Taiwan will be conducted by or through the American Institute in Taiwan, in the manner and to the extent directed by the President. This provision implements the President's statement of December 15, 1978, that the American people and the people on Taiwan "will maintain commercial, cultural and other relations without official government representation. . . ." The American Institute in Taiwan is a nonprofit corporation organized under the laws of the District of Columbia, which has been established for this purpose.

Section 105

This section provides for the performance and enforcement of existing agreements, and the making of new agreements, with the people on Taiwan by or through the Institute, to satisfy authorizations or requirements for agreements or arrangements with the people on Taiwan. If, for example, an agreement with a "foreign country" is a condition of eligibility for participation in a program, with respect to the people on Taiwan such a condition will be satisfied by an agreement entered into or performed through the Institute. This section applies not only to new agreements, but also to previous agreements, which remain in force unless terminated.

Section 106

This section provides for dealing with the people on Taiwan through an instrumentality acting on their behalf. It makes clear that provisions for dealing with a "foreign government" will be satisfied with respect to the people on Taiwan by dealing with that instrumentality. Section 104 and 105 and this section provide for the conduct of nongovernmental relations through the Institute and the counterpart instrumentality of the people on Taiwan.

Section 107

This section provides that when the application of U.S. law depends upon foreign law, the law applied by the people on Taiwan shall be looked to for that purpose.

Section 201

This section authorizes departments and agencies to provide support for the Institute's internal operations through transfers of property and the performance of functions and services. This will provide access by the Institute to existing Federal resources in order to reduce costs and increase the efficiency of operations. It is expected that such support usually will be provided on a reimbursable basis.

Section 202

This section authorizes departments and agencies to acquire and accept services from the Institute. Although the initial arrangements with the Institute are on a conventional contractual basis, this section authorizes the President to disregard normally applicable laws and regulations, such as limitations in procurement regulations, in order to permit the development of appropriate arrangements in these unique circumstances.

Section 203

This section authorizes the transfer to the Institute of alien employees of the U.S. Government and preserves their benefits under the the compensation plan applicable in Taiwan under section 444 of the Foreign Service Act of 1946, as amended (22 U.S.C. 889). It is expected that the Institute will adopt this plan for its alien employees. This section also authorizes the continued participation in U.S. Government retirement systems by those transferred alien employees who have heretofore been covered by such systems, subject to continued payment of contributions and deductions to the appropriate fund.

Section 204

This section, consisting of five subsections, provides authority for the separation of Federal employees for employment with the Institute, preservation of their Federal benefits, and reemployment rights in the Federal service. It is contemplated that such separated Federal personnel will make up the staff of the Institute.

Subsection (a) provides that a Federal officer or employee who accepts employment with the Institute may be separated from his or her agency.

Subsection (b) provides that any officer or employee so separated is entitled, upon termination of employment with the Institute, to be reemployed or reinstated in the Federal service. Normally, reemployment for an employee in the classified service will be to the position from which the employee was separated. However, the President is authorized to determine the appropriateness of the position for reemployment. It is anticipated that, especially in personnel systems based on the rank in person concept, reemployment could be in a higher class.

Subsection (c) provides for continuity of Federal benefits during service with the Institute, including compensation for job related death, illness or injury; health and life insurance, leave, and retirement. Contributions, where required, must be paid in order to preserve these benefits. This section also provides that death or retirement by a Federal employee separated under subsection (a) while employed by the Institute shall be considered a death in or retirement from the Federal service for purposes of benefit entitlement.

Subsection (d) authorizes the extension of the benefits of title II of the bill to Federal employees serving with the Institute on leave without pay prior to the bill's enactment.

Section 205

This section addresses several questions relating to the status of the Institute and its employees. It specifies that the Institute shall be exempt from Federal taxation and shall not be an agency or instrumentality of the United States. With respect to the Institute's employees, this section provides that they shall not be employees of the United States, and that they shall be exempt from the statutory prohibition against dealing with their former agencies in representing the Institute. It also provides that the salaries and allowances of Institute employees shall be taxable in the same way as salaries and allowances of Federal employees.

Section 301

This section authorizes appropriations to the Secretary of State of funds necessary to carry out the bill. It is contemplated that the funds necessary for the operation and support of the Institute on behalf of all departments and agencies will be consolidated into a single account. However, this section preserves the continued ability of departments and agencies to utilize the Institute for the performance of functions involving the use of funds appropriated to the department or agency concerned. Funds appropriated under this section could be made available until expended.

Section 302

This section authorizes the Secretary of State to use the funds made available under the bill to further the maintenance of commercial, cultural and other relations with the people on Taiwan on an unofficial basis. In particular, it authorizes the Secretary to provide these funds to the Institute for this purpose. The use of appropriated funds by the Institute will be goverened by an appropriate contractual arrangement with the Secretary of State, which will contain limitations on expenses, such as limitations on the compensation of Institute employees. The Institute will be required under this arrangement to adhere generally to the limitations applicable to Federal employees.

Section 303

This section requires that departments and agencies assure access by the Comptroller General to the Institute's books and records, and that they provide the Comptroller General the opportunity to audit the Institute's operations.

Section 304

This section approves and confirms the U.S. Government actions taken since January 1, 1979, and prior to the bill's enactment with respect to the people on Taiwan.

Section 305

This section authorizes the President to prescribe appropriate rules and regulations to carry out the bill's purposes.

APPENDIX 2

ARTICLES OF INCORPORATION OF THE AMERICAN INSTITUTE IN TAIWAN

(Known in Chinese as "Mei Chou Tsai Taiwan Hsüeh Huei")

To: The Recorder of Deeds, Washington, D.C.

We, the undersigned natural persons of the age of twenty-one years or more, acting as incorporators of a corporation, adopt the following Articles of Incorporation pursuant to the District of Columbia Nonprofit Corporation Act, District of Columbia Code (1973 ed.) Title 29, Chapter 10:

First: The name of the Corporation is The American Institute in Taiwan (the "Institute").

Second: The period of duration of the Institute is perpetual.

Third: The Institute is organized to engage exclusively in charitable, educational, and scientific activities and, in furtherance of such activities (and without limitation):

(a) To enable the American people and the people on Taiwan to maintain commercial, cultural, or other relations without official government representation or diplomatic relations;

(b) To represent the interests of the United States and its people in conducting and carrying out programs, transactions, and other relations with the people on Taiwan;

(c) To enable international agreements and arrangements to be performed and enforced in a manner consistent with subparagraphs (a) and (b) above; and

(d) To perform functions, on behalf of the American people, that would otherwise be performed by Government.

Fourth: The Institute shall have no members.

Fifth: The manner of election or appointment of directors of the Institute, who shall be designated as Trustees, shall be provided for in the bylaws.

Sixth: The internal affairs of the Institute shall be regulated by the bylaws, and the business and affairs of the Institute shall be managed and conducted by the Trustees in accordance with the bylaws. The initial bylaws shall be adopted by the initial Board of Trustees. The power to amend or repeal the bylaws shall be vested in the Trustees. The provisions of the bylaws and the management of the Institute in accordance therewith shall be subject to the following:

(a) The Institute shall not be conducted for profit or operated for the purpose of carrying on a trade or business for profit;

(b) The Institute shall not exercise any power or authority, engage in any activity, or solicit or accept any contribution that would prevent it from obtaining exemption from United States Federal income taxation as a corporation described in section 501(c)(3) of the Internal Revenue Code or cause it to lose its exempt status under such secton;

(c) No part of any contribution to, or of the net earnings or assets of, the Institute shall insure to the benefit of or be distributable to its Trustees, officers, or other private persons, provided that nothing herein shall preclude the Institute from paying reasonable compensation for services rendered, making in reasonable amounts reimbursements for expenses incurred or advances for expenses to be incurred on behalf of the Institute, and making payments and distributions in furtherance of the purposes set forth in Article Third hereof;

(d) No substantial part of the activities of the Institute shall be the carrying on of propaganda, or otherwise attempting, to influence legislation except as permitted by section 501(c)(3) and (h) (if a proper election is made thereunder) of the Internal Revenue Code;

(e) The Institute shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office;

(f) In the event of dissolution or final liquidation of the Institute, the Board of Trustees shall, after paying or providing for the payment of all the liabilities of the Institute, distribute all of the assets of the Institute to the Government of the United States.

For purposes of this Article Sixth, the term "Internal Revenue Code" means the Internal Revenue Code of 1954 as amended, and citations in sections of the Internal Revenue Code shall be deemed to include the corresponding provisions of any subsequent Federal tax laws.

Seventh: The private property of the Trustees and officers of the Institute shall not be subject to payment of corporate debts.

Eighth: The address, including street and number, of the initial registered office of the Institute is 1761 N Street, N.W., Washington, D.C. 20036, and the name of its initial registered agent at such address is L. Dean Brown.

Ninth: The number of Trustees constituting the initial board of Trustees is three (3), and the names and addresses, including street and number, of the persons who are to serve as the initial Trustees are:

L. Dean Brown, 3030 Cambridge Place, NW., Washington, D.C.
David Dean, 10020 Colvin Run Road, Great Falls, Va.
Edwin M. Martin, 4101 Cathedral Avenue, NW., Washington, D.C.

They shall hold office until their successors are appointed.

Tenth: The name and address, including street and number, of each incorporator is:

L. Dean Brown, 3030 Cambridge Place, NW., Washington, D.C.
David Dean, 10020 Colvin Run Road, Great Falls, Va.
Edwin M. Martin, 4101 Cathedral Avenue, NW., Washington, D.C.

Dated the 10th day of January, 1979.

L. DEAN BROWN,
DAVID DEAN,
EDWIN M. MARTIN,
Incorporators.

District of Columbia, ss:

I, Irene Ingalls, a Notary Public in and for the District of Columbia, hereby certify that on the 10th day of January 1979, personally appeared before me L. Dean Brown, David Dean and Edwin M. Martin who signed the foregoing document as incorporators, and swore that the statements contained in it are true.

IRENE INGALLS,
Notary Public of the District of Columbia.

My Commission expires June 14, 1979.

APPENDIX 3

Department of State—Negotiated Contract

Issuing office: U.S. Dept. of State, Supply and Transportation Division, Washington, D.C.

Contracting officer: Gerald L. John (703) 235–9531.

Contractor: The American Institute in Taiwan.

Type of Instrument: Cost Reimbursement Contract.

Administration By: Procurement Branch, Supply and Transportation Division, Department of State.

This Contract is entered into by and between the Department of State on behalf of the United States of America (hereinafter "the Department" or "the Government") represented by the Contracting Officer, and the American Institute in Taiwan (hereinafter "the Institute"), a District of Columbia nonprofit corporation. The rights and obligations of the parties are governed by the following Schedule, General Provisions and Attachments A through C, described in the Table of Contents below. In the event of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

In Witness Whereof, the parties hereto have executed this Contract.

The United States of America,
Gerald L. John, *Contracting Officer.*
The American Institute in Taiwan,
Contractor.

Table of Contents

Article XVIII—Insurance and Bonds.
Article XIX—Conformity of Institute Operations with Regulations.
Article XX—Immunity from Local Jurisdiction.
Article XXI—Unsatisfactory Performance.
Article XXII—Ethical Conduct.

II. General Provisions: Department of State General Provisions, Form DS–1762 (11/77). Clause 1.a. therein is restated as follows: "As used in the General Provisions, the term 'Administrator,' or 'Deputy Administrator' of the 'Agency' shall mean the 'Secretary,' or 'Deputy Secretary' of 'State.' 'His duly authorized representative' means 'any person or persons or board (other than the Contracting Officer) authorized to act for the head of the department or the Secretary.' "

III. Attachments:
A. Compensation and Benefits for Institute Employees.
B. Contract Security Classification Specification, Form DD–254.
C. List of Property Furnished to the Institute.

SCHEDULE

ARTICLE I—SCOPE OF WORK

The Institute will perform the following services:

(a) Maintain offices in Washington, D.C. and other locations as mutually agreed to by the parties;

(b) Immediately prepare to commence operations in Taiwan no later than March 1, 1979 (Preparations will include the development of staffing, accounting, payroll and administrative systems as may be necessary to carry out the Institute's responsibilities under this contract);

(c) Carry out, on an unofficial basis, programs, transactions, and other relations with or relating to the people on Taiwan, and perform and enforce existing international and other agreements and arrangements between the Government or any department or agency thereof and the people on Taiwan, in accordance with the President's Memorandum of December 30, 1978, to Heads of Departments and Agencies, entitled "Relations with the People on Taiwan" (*44 Fed. Reg. 1075*); and

(d) Otherwise represent the United States and the American people, and carry out functions on their behalf, as directed by the Contracting Officer or the Contracting Officer's Representative, with respect to the people on Taiwan.

ARTICLE II—CONTRACTING OFFICER'S REPRESENTATIVE

(a) The Contracting Officer's Representative (COR) shall be an official designated in writing by the Contracting Officer.

(b) The COR is authorized to provide guidance and direction to the Institute to implement the general scope of the work, within the terms of this contract. The Institute will notify the Contracting Officer and secure his or her approval before implementing any guidance or

direction which the Institute believes will affect the cost of performance to the extent that additional funds will be required for performance. Whenever an increase in funding pursuant to this provision is anticipated, the Institute shall provide an estimate of the cost of performance with its request for the Contracting Officer's approval. The COR shall be the Department official who is authorized to certify that the invoiced goods and services have been received as outlined in Articles XIII and XIV hereof.

ARTICLE III—PERIOD OF PERFORMANCE

(a) This contract shall be terminated on September 30, 1979, unless earlier terminated in accordance with the General Provisions, or extended pursuant to paragraph (c) of this Article.

(b) Not later than June 30, 1979, the Institute will submit to the Contracting Officer an estimate of the costs of continuing to perform services. The estimate must contain detailed information concerning projected staffing, salaries, property, and other costs. On the basis of this estimate, the parties will discuss the replacement of this contract with a successor arrangement.

(c) If the parties have not entered into a successor arrangement by August 30, 1979, the Government may at its option extend and require continued performance under this contract for an additional period or periods not exceeding one year after September 30, 1979.

(d) The Institute shall not incur any costs or obligations beyond September 30, 1979, unless specifically approved by the Contracting Officer.

ARTICLE IV—OTHER U.S. GOVERNMENT AGENCY PARTICIPATION

Subject to the approval of the Department's Contracting Officer, the Institute may perform services for any other department or agency of the Government, or third parties, under this contract or any other arrangement. Directions to the Institute to perform additional services for other departments and agencies under this contract will be in the form of a Delivery Order against this contract, issued by a duly authorized Contracting Officer of the department or agency concerned, and shall include a definition of the work to be performed, an appropriate citation of funds obligated for this purpose and, if appropriate, special billing instructions.

ARTICLE V—ESTIMATED COST

The total estimated cost of this contract to the Government is $----------.

ARTICLE VI—FINANCING AND FUNDS CONTROL

(a) *Purpose.*—Subject to the conditions set forth below, the Government will advance funds or credit to the Institute in the amount of $---------- to provide working capital for operations in accordance with Department of Treasury Advance Financing Regulations 31 CFR 205 (Treasury Department Circular Number 1075). The Director of the Office of Budget and Finance in the Bureau of Administration or whomever that official may designate in writing, hereinafter the "Administrator" of this advance or credit account, shall

determine the initial amount of funds or credit to be made available, as well as the future needs for such advances.

(b) *Special Bank Account(s).*—All advances or other payments under the contract shall be made to the Institute's Special Bank Account(s) with a bank or banks approved by the Administrator. The funds in such Special Bank Account(s) shall not be mingled with other funds of the Institute and shall be withdrawn from such account only as hereinafter provided.

(c) *Use of Funds.*—The funds in a Special Bank Account may be used by the Institute solely to pay allowable costs as defined in Article XIV of this contract, entitled "Allowable Costs".

(d) *Bank Agreement.*—Before any advance is made to a Special Bank Account, the Institute shall enter into an agreement with the bank at which such account is to be established in the form prescribed by the Administrator clearly setting forth the character of the account and the responsibilities of the bank with respect to it.

(e) *Lien on Special Bank Account(s).*—The Government shall have a lien upon any balance in the Special Bank Account(s) paramount to all other liens, to secure the repayment of any advances made hereunder together with interest.

(f) *Lien on Property.*—A lien in favor of the Government, paramount to all other liens upon the supplies and all other property of the Institute, shall be secured to cover any and all advances made hereunder. The Institute shall maintain adequate accounting control over such property on its books and records. If at any time during the performance of this contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Institute shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt shall be delivered to the Contracting Officer. If this contract is terminated in whole or in part and the Institute is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer. Such approval shall constitute a release of the Government's lien hereunder to the extent that the proceeds of the sale, or the credit allowed for such retention, is applied in reduction of advances then outstanding hereunder.

(g) *Withdrawal and Withholding of Payments.*—The Institute may at any time repay all or any part of the funds advanced under this contract. When so requested in writing by the Administrator, the Institute shall repay such of the advances as are in the Administrator's opinion in excess of current requirements. If the Institute fails to comply with such a request, the Administrator (i) may withdraw advances from the Special Bank Account by checks payable to the Government signed solely by the Administrator, or (ii) withhold amounts due the Institute from invoices submitted pursuant to Article XIII, entitled "Payment". Upon completion or termination of the contract, all remaining advances and interest charges shall be fully refunded. In any event the Contracting Officer may unilaterally take the following actions:

(i) Demand immediate repayment of the remaining balance of advances made hereunder; and

(ii) Take possession of and sell at public sale, at which the Government may be the purchaser, or at a private sale, all of any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of any remaining balance of advances hereunder; and

(iii) The Government may apply such returns of advances to reduce any claims by employees of the Institute, claims of the Government, or other claims against the Institute;

(h) *Local Currency.*—The Institute shall, to the extent practicable, pay its expenses in Taiwan in local currency, and shall obtain its local currency from a Disbursing Officer or other source designated by the Administrator or the Contracting Officer.

(i) *Interest Charges.*—No interest shall be charged by the Department for advances made hereunder. The Institute shall charge interest at the rate established pursuant to Public Law 92–41, 85 Stat. 97, for the Renegotiation Board on subadvances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on subcontracts with nonprofit educational or research institutions for experimental, developmental or research work or as otherwise authorized by the Contracting Officer. To the maximum extent possible, funds in possession of the Institute pursuant to this Article or from any other source shall be deposited in interest bearing accounts which offer the maximum benefit to the Government.

(j) *Covenants.*—During the period of time that advances may be made hereunder and so long as any such advances remain available to the Institute, it shall not without the prior written consent of the Administrator:

(i) Mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the Institute whenever acquired;

(ii) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes or claims for money due or to become due;

(iii) Sell, convey, or lease any of its assets;

(iv) Acquire for value the stock or other securities of any corporation, municipality, or governmental authority, except direct obligations of the United States;

(v) Make any advance or loan to or incur any liability as guarantor, surety, or accommodation endorser for any other firm, person, or corporation;

(vi) Permit a writ of attachment or any similar process to be issued against its property without procuring release thereof or bonding the same within 30 days after the entry of the writ of attachment or any similar process;

(vii) Make any substantial change in management, ownership, or control of the corporation;

(viii) Deposit any of its funds in a bank not approved by the Administrator;

(ix) Create or incur indebtedness for borrowed money or advances other than advances to be made hereunder, except as specified herein;

(x) Make or convenant itself to make any capital expenditures; or

(xi) Make any payments on account of the obligations under this contract except in the manner and to the extent herein provided.

(k) Pursuant to the provisions of (b) through (j) above, the Institute may be required to receive, control, account for and disburse other Government funds as directed by the Administrator or the Contracting Officer.

ARICLE VII—PROHIBITION AGAINST ASSIGNMENT (IN LIEU OF CLAUSE 10 OF THE GENERAL PROVISIONS)

Notwithstanding any other provisions of this contract, the Institute shall not transfer, pledge, or otherwise assign this contract, or any interest therein or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

ARTICLE VIII—COMPENSATION AND BENEFITS OF EMPLOYEES

Employees shall be compensated in accordance with Attachment A, entitled "Compensation and Benefits for Institute Employees." Payments by the Institute for personnel costs incurred in accordance with that Attachment shall be allowable costs under Article XIV of this Schedule. All American positions will be classified in accordance with position classification standards followed by the U.S. Government (Foreign Service or General Service, as appropriate). The position classification structure for the Institute will be subject to approval by the COR at the outset of performance, and on an annual basis thereafter.

ARTICLE IX—KEY PERSONNEL

(a) The Institute personnel currently filling the positions of the Director, Secretary, and Treasurer in Washington, D.C., and the head of the Institute's Taipei office, his or her deputy, and the administrative officer are considered essential to the successful performance of this contract. The COR may alter this list of such positions by notifying the Institute in writing.

(b) Any proposed replacement of such personnel by the Institute shall require the agreement of the COR in writing, The Institute shall provide the COR in advance of any proposed replacement with sufficient data outlining the background, education, experience and other qualifications for the position and of the individual concernced as the COR may require.

ARTICLE X—SECURITY REQUIREMENTS

Security Requirements shall be as specified on Form DD–254, Attachment B, hereto.

ARTICLE XI—REPORTING REQUIREMENTS

The Institute shall furnish the following reports:

(a) *Progress Reports.*—Monthly, or more frequently as required by the COR, written reports of the progress of the Institute will be submitted to the COR. These reports shall be prepared to keep the COR

apprised on a timely basis of the Institute's programs, transactions, and other relations with or relating to the people on Taiwan and of events which might have an impact on the Institute or its intended mission.

(b) *Contract Status Reports.*—All other activities of the Institute not covered by the Progress Report shall be reported to the COR with a copy to the Contracting Officer on a monthly basis. Contract status reports shall cover separately all functions for which the Institute is responsible under this contract, including such items as finances, staffing, transportation, supply, housing, utilities, maintenance and communications. Identification of any actual or potential problems with the Institute's administrative plans for handling any problems should be indentified.

(c) *Financial Reports.*—The Institute shall submit periodic financial management reports to the Administrator, describing such items as costs incurred, percentage of estimated cost expended under the contract, or other items which would indicate a change in the Institute's financial conditions.

(d) *Personnel Reports.*—The Institute shall submit reports concerning its personnel as may be required by the COR.

(e) The form, content and detail of the above reports will be specified by the Contracting Officer, the COR or the Administrator.

ARTICLE XII—ACCOUNTING AND AUDIT

(a) The Institute shall promptly establish accounting and payrol[1] systems which as a minimum will meet the applicable requirements of title 41, Code of Federal Regulations (CFR), chapter 1, section 1–15, and will provide other financial data required by the Administrator. Section 15 of 32 CFR shall be referred to if further guidance is needed.

(b) The accounting system shall be designed to charge the Department for all direct costs associated with the performance of the work covered under this contract and for all indirect costs which normally would be charged to General and Administrative or Overhead accounts for allocation to or among other cost centers (customers). The system should provide for accounting for allocable direct costs which may be incurred as a result of performance of functions contracted or otherwise provided for outside of this contract or for special projects which are being performed under this contract.

(c) The Administrator shall approve the Institute's accounting system prior to implementation. Subsequently, the Institute shall make changes in the accounting system upon the request of the Administrator.

(d) The Institute shall have a Certified Public Accountant, approved by the Administrator, audit all accounting and fiscal activities of the Institute at least once each year. Said accounting firm shall prepare and certify the Balance Sheets, a Statement of Financial Condition (similar to a Profit and Loss Statement) and a Cash Flow Statement for the annual period ending September 30 of each year and shall submit them to the Contracting Officer by November 1 of that year.

(e) The Institute shall permit the Comptroller General of the United States and other persons designated by the Contracting Officer to have access to the books and records of the Institute and to audit its operations. The Institute shall include provision for such access and audit in its grants and contracts, as directed by the Contracting Officer.

ARTICLE XIII—PAYMENT

(a) Once each month, or more frequently if authorized by the Contracting Officer or the COR, the Institute may submit to the COR, in such form and detail as may be directed, vouchers or invoices for the payment of costs incurred in accordance with Clause Number 7 of the General Provisions, entitled "Allowable Cost and Payment."

(b) When receipt of goods or services has been certified, payment in the form of funds or continued credit shall be made into the Special Bank Account(s) established under article VI (b) of this Schedule by the following: Office of Finance—General Claims, P.O. Box 9487, Rossyln Station, Arlington, Va.

(c) Separate billing instructions will be provided to the Institute by the Contracting Officer, as appropriate, with respect to services performed by the Institute under article IV of this Schedule.

ARTICLE XIV—ALLOWABLE COSTS

Except as otherwise provided herein, all contract costs will be reimbursed as specified in Clause 7 of the General Provisions, entitled "Allowable Cost and Payment." Any charges for which the allowability is questioned by the COR or the Department's Auditor shall be submitted to the Contracting Officer for approval prior to payment. The decision of the Contracting Officer as to allowability of such charges shall be final and not subject to Clause 25 of the General Provisions, entitled "Disputes". Representational costs shall be considered allowable costs only to the extent approved by the Administrator in writing.

ARTICLE XV—RECORDS MANAGEMENT, PRIVACY AND FREEDOM OF INFORMATION

Even though the Institute as a private corporation is not subject to the Freedom of Information Act, the Privacy Act, or the Records Management Act, the Institute shall nevertheless establish records management policies and procedures which are consistent with the policies and procedures applicable to Government records covered by the Records Management Act, and shall maintain such records consistent with the Freedom of Information and Privacy Acts as if such acts applied to the Institute. The Institute shall refer requests from the public for access to the Institute's records to the COR.

ARTICLE XVI—PROPERTY (GFP) AND SERVICES (GFS) FURNISHED TO THE INSTITUTE

(a) GFP will be furnished to the Institute as described in Attachment C. For the purposes of this contract, GFP shall include data and records transferred to the Institute or any records or data created in the performance of this contract. The list of GFP in Attachment C shall be updated quarterly for quantity changes and property additions and deletions. The Institute shall receive and utilize the GFP in accordance with Clause 23 of the General Provisions.

(b) Before implementing any management plan that contemplates the performance of a function by or for the Institute which would involve an increase in staff or the procurement of goods and/or

services, the Institute will first obtain a determination from the Contracting Officer as to the availability of GFP or GFS.

ARTICLE XVII—PROCUREMENT OF GOODS AND SERVICES

(a) In the acquistition of its goods and services from sources other than the Department, the Institute shall comply to the maximum extent possible with the rules and regulations set forth in 6 FAM 200 and Chapters 1 and 6 of 41 CFR. In each case where the Institute determines that it must deviate from the above procedures, the reasons therefor must be fully documented in the files.

(b) The Institute is hereby authorized to use approved Government sources of supply such as executive agency contracts, General Services Administration Schedule Contracts and such procurement support from Government agencies as may be mutually agreed upon.

ARTICLE XVIII—INSURANCE, BONDS AND CLAIMS

After consultation with the Contracting Officer, and subject to his approval, the Institute shall:

(a) Obtain Fidelity and Forgery bonds on individuals empowered to dispense funds, obtain services and control or dispose of GFP to cover the extent of their authority; and

(b) Provide Insurance for Liability to Third Persons as follows (In lieu of Clause 24 of the General Provisions):

(i) Throughout the performance of this contract, the Institute shall procure and thereafter maintain comprehensive general liability (bodily injury) and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to performance under this contract, and such other insurance as the Contracting Officer may from time to time require.

(ii) The Institute shall not obtain insurance coverage for GFP, property owned by the Institute, or other property controlled by the Institute unless such other property is controlled by the Institute on the condition that the Institute obtain specified amounts of liability insurance.

(iii) The Institute shall be reimbursed: (1) the reasonable cost of insurance as required or approved pursuant to the provisions of this clause without regard to and as an exception to Clause 4 of the General Provisions, entitled "Limitation of Costs", for liabilitites to third persons for loss of or damage to property (other than property (A) owned, occupied or used by the Institute or rented to the Institute, or (B) in the care, custody, or control of the Institute), or for death or bodily injury, not compensated by insurance or otherwise, arising out of the performance of this contract, whether or not caused by the negligence of the Institute, its agents, servants or employees, provided such liabilities are represented by final judgments or settlements approved in writing by the Government, and expenses incidental to such liabilities.

(iv) The Institute shall give the Contracting Officer immediate notice of any suit or action filed, or prompt notice of any claim made, against the Institute arising out of the performance of this contract (including any suit, action or claim against an employee of the Institute with respect to his or her functions as an employee

of the Institute), the cost and expense of which may be reimbursable to the Institute under the provisions of this contract and the risk of which is then uninsured or in which the amount claimed exceeds the amount of coverage. The Institute shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Institute. If the amount of the liability claimed exceeds the amount of coverage, the Institute shall authorize the Contracting Officer to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. If the liability is not insured or covered by bond, the Institute shall, if required by the Contracting Officer, authorize the Contracting Officer or his or her representative to settle or defend any such claim and to represent the Institute in or take charge of any litigation in connection therewith; provided, however, that the Institute may be associated with the Contracting Officer or his or her representative in the settlement or defense of any such claim or litigation.

(v) The Institute shall provide insurance coverage up to the following amounts:

Third Party Liability: Bodily Injury—$300,000 each occurrence. Property Damage—$10,000 each occurrence.

Auto Liability: Bodily Injury—$100,000 each person, $300,000 each occurrence. Property Damage—$20,000 each occurrence.

The Institute shall determine if local statutes or customs would dictate lesser amounts, and if so, advise the Contracting Officer.

ARTICLE XIX—CONFORMITY OF INSTITUTE OPERATIONS WITH REGULATIONS

In addition to specific requirements set out in this contract, the Institute shall in the conduct of its operations be guided by, and as directed by the COR conform to, current or future regulations and directives applicable to the Department.

ARTICLE XX—IMMUNITY FROM LOCAL JURISDICTIONS

Any immunity accorded by the people on Taiwan to the Institute or its personnel may be waived by the COR in any case in which the COR determines such action to be appropriate.

ARTICLE XXI—UNSATISFACTORY PERFORMANCE

If the Contracting Officer advises the Institute that its performance under this contract is unsatisfactory, the Institute shall take corrective action within 30 days and notify the Contracting Officer what action has been taken. If no action is taken or the Contracting Officer determines that the action is inadequate, the Contracting Officer may require the Institute to call a meeting of the trustees of the Institute, at which time corrective action shall be discussed and a plan of action agreed upon by the trustees and the Contracting Officer.

ARTICLE XXII—ETHICAL CONDUCT

The Institute shall require in all of its contracts of employment that all of its trustees, employees, consultants, and other advisors conduct themselves during and subsequent to their relationship with the

Institute in a manner consistent with 18 U.S.C. 201, 202, 205–209 and implementing regulations, as if such statutes applied to such trustees, employees, consultants, and advisors. The Institute shall enforce the provisions of this Article during and subsequent to the terms of such contracts through all appropriate means, including the institution of judicial proceedings.

ATTACHMENT A—COMPENSATION AND BENEFITS FOR INSTITUTE EMPLOYEES

U.S. CITIZEN EMPLOYEES

1. The Institute will base its salary schedule on those of the U.S. Foreign Service and the U.S. Civil Service (General Schedule).

2. The Institute will pay former U.S. Government employees who have reemployment rights with the U.S. Government the same salary as they received in their former positions.

3. The Institute will, upon notice by an employee's former agency, increase the salary of a former U.S. Government employee employed by the Institute so as to give effect to any promotion which could have been granted by such agency.

4. The Institute will pay allowances as described in 5 U.S.C. 5921–5924 in accordance with the Standardized Regulations (Government Civilians, foreign areas) published by the Department of State and may use the local Taiwan index contained in the "U.S. Department of State Indexes of Living Cost Abroad" published by the Bureau of Labor Statistics of the U.S. Department of Labor for purposes of Cost of Living Abroad (COLA).

5. The Institute will pay any taxes which may be assessed in Taiwan against the compensation paid by the Institute to its U.S. citizen employees.

6. The Institute will pay a tax equalization allowance as may be necessary to assure that amounts paid by the Institute to its U.S. citizen employees result in after tax income as if those employees were employed and paid by a Government agency.

7. The basic salary paid by the Institute to any employee who is simultaneously receiving an annuity or retired pay from the U.S. Government will be reduced as necessary to assure that the aggregate of such salary and annuity or retired pay will not exceed in any calendar year the total amount the employee could have received if employed by the Government in a position of comparable salary.

8. The Institute shall establish annual, sick and home leave plans, travel and transportation regulations, standards for claims and reimbursements for loss of property, injury or death incident to service, continuation of salary and allowance in a missing status and medical and other benefits based upon those applicable to the U.S. Foreign Service. In determining an employee's leave privileges, the employee's prior U.S. Government service, including leave balances, will be taken into account. Employees may transfer annual, sick and home leave balances held with the U,S. Government to the Institute. Claims filed pursuant to these standards shall be referred to the Department for processing.

FOREIGN NATIONALS

9. Subject to the Contracting Officer's approval, the Institute will adopt a local compensation plan for salaries and benefits (including workmen's compensation) for its foreign national personnel in Taiwan, and will adjust such plan from time to time in accordance with locally prevailing compensation practices.

10. Foreign national personnel who are to be initially hired by the Institute in Taiwan and who already have Civil Service Retirement (CSR) coverage will be offered an opportunity to continue such coverage, to the extent this is possible under U.S. law. Those without CSR coverage and aliens hired in the future will not be given CSR coverage but will receive prevailing benefits.

11. The Institute shall amend its local compensation plan to provide local retirement or local social security or provident plan coverage based on prevailing local practices for its foreign national employees not covered under CSR.

12. Foreign national employees who were employed by the U.S. Government just prior to their employment by the Institute may have their existing annual and sick leave balances in their U.S. Government positions carried over to their Institute positions as well as longevity for the purposes of determining periodic step increases and severance pay benefits provided such employees did not receive severance pay or immediate retirement or lump sum leave payments at the conclusion of their former employment.

GENERAL

13. The Institute may employ under contract part-time, intermittent or temporary personnel.

14. The Institute will make employee deductions and will make current payments of such employee deductions and employer contributions to U.S. retirement and insurance programs as required to maintain coverage of its employees under such programs.

15. Except as may be otherwise specifically provided in this contract, the benefits provided to any of the trustees, officers, employees, consultants, advisors, or any other persons retained by the Institute shall not exceed in type or amount the benefits accorded to Government employees in similar circumstances.

○